

THE DEATH PENALTY

By

THORSTEN SELLIN

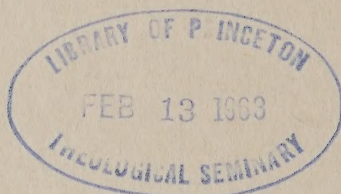
A REPORT FOR THE MODEL PENAL CODE PROJECT OF
THE AMERICAN LAW INSTITUTE

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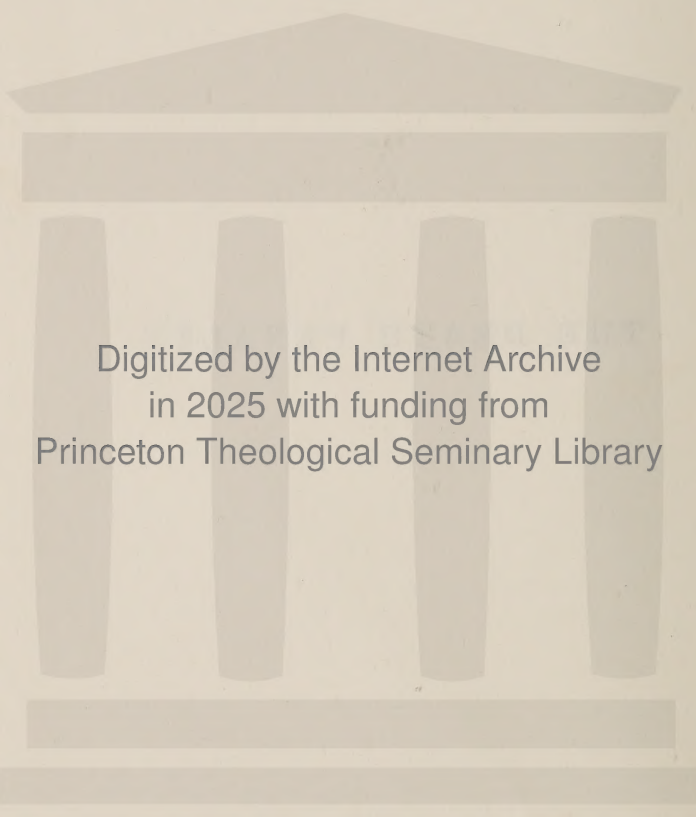
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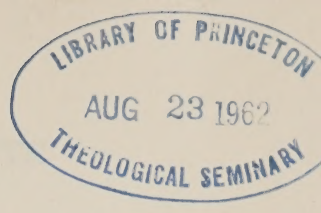


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PREFATORY NOTE

The issue of whether or not the death penalty should be employed as the punishment for certain serious crimes is bound to arise in the minds of any commission which is faced with the preparation of a penal code which is to reflect the best thinking of the day and therefore be worthy of adoption by legislative bodies.

The purpose of this report¹ is not to present a brief for or against the death penalty. It aims to furnish some data which will clarify some of the issues involved and to examine some of the claims made by those who defend or oppose the use of this punishment. It is hoped that the facts presented will afford a basis for a judgment as to whether the death penalty should be excluded or retained in a modern penal code. Attention will be focussed on the crime of murder and the use of the death penalty for this crime in time of peace.

THORSTEN SELLIN

(1) This report is to large degree a consolidation and revision of reports, which the author prepared for the Royal Commission on Capital Punishment (*Minutes of Evidence*. Thirtieth Day, Thursday, 1st February, 1951. London: His Majesty's Stationery Office, 1951, pp. 647-78) and the Joint Committee of the Senate and House of Commons on Capital Punishment and Corporal Punishment and Lotteries (*Minutes of Proceedings and Evidence*, No. 17, Tuesday, June 1, 1954; Wednesday, June 2, 1954. Ottawa: Queen's Printer, 1954, pp. 665-743; *Appendix "F" of the Minutes of Proceedings and Evidence No. 20 of the Joint Committee . . . Ottawa, 1955*).

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THE DEATH PENALTY

THE STATUS OF THE DEATH PENALTY

The death penalty is found in Australia, except in Queensland; in Africa; and in Asia, except in Israel, Ceylon (temporary moratorium), and the Indian provinces of Travancore and Nepal. It is in Europe and the Americas that the cleavage of opinion is found. The countries of Eastern Europe and the Balkans have retained it, but in Western Europe it has been abolished in all nations except in Spain, France, the United Kingdom and the Irish Republic. In Latin America, it has been abolished in Argentina, Brazil, Colombia, Ecuador, Venezuela, Uruguay, Costa Rica, the Dominican Republic, Panama, and Mexico (federal law and all but eight of the states). In North America, Canada has retained it.

In the United States

The death penalty is found in various statutes of the federal government of the United States, and in those of most of the states. Five states have completely renounced it: Wisconsin, since 1853; Maine, since 1876, except from 1882 to 1887, when it temporarily restored it; Minnesota, since 1911; Alaska, in 1957; and Delaware, in 1958. Michigan abolished it in 1846 for murder, but retained it for treason. Rhode Island removed it in 1852 but revived it twenty years later as an alternative punishment for murder committed by a prisoner serving a life sentence for murder; and North Dakota, while removing it as a penalty for murder in 1915, retained it for treason and adopted the formula of Rhode Island. Since these three states have found no occasion to apply the death penalty since the original dates of its abolition, one may claim that

for all practical purposes the eight states mentioned are abolitionist states. To this list we should add Puerto Rico which abolished this penalty in 1929, and the Virgin Islands and Hawaii, which abandoned it in 1957.^{1a}

In the past, several other states have experimented with abolition: Arizona, 1916-1918 (except for treason); Colorado, 1897-1901; Iowa, 1872-1878; Kansas, 1907-1935 (no execution previously since 1872); Missouri, 1917-1919; Oregon, 1915-1920; South Dakota, 1915-1939; Tennessee, 1915-1919 (for murder); and Washington, 1913-1919. The experience of these as well as of other states with abolition will be examined later in this report.

If we consider the countries abroad which have retained or abolished the death penalty, one might assume that those with high homicide rates would fall into the former class and those with low rates into the latter. One might even expect, perhaps, that there would be some other similarities which would differentiate the countries of each group. Such is not the case. We find in both groups countries with the same level of civilization, the same religion, the same kind of population, the same form of government, the same sense of justice and morality and the same homicide death rates, just as we find in each class countries that in these respects differ greatly from one another. The following table (Table 1) shows that some Western nations like and others dislike the death penalty, no matter how high or low their homicide death rates may be. There are apparently other reasons than those which a crime rate provides that account for this fact, reasons of a more or less intangible character, connected with the political, social and economic structure of a country and rooted in traditions that are supported by sentiments and beliefs which are not influenced by the level of criminality.

(1a) Puerto Rico abolished the death penalty in 1917 temporarily until April 30, 1921; the 1929 act removed it permanently. The Virgin Islands Code which went into effect September 1, 1957 contains no death penalty. Previously the 1921 Code of the Municipality of St. Croix had contained it, but not the Code of Laws of St. Thomas and St. John of the same year.

TABLE 1

COMPARATIVE HOMICIDE DEATH RATES IN 1948 OF SOME COUNTRIES
WITH OR WITHOUT THE DEATH PENALTY FOR MURDER

Rates per 100,000 population

Countries with death penalty		Countries without death penalty	
Name of country	Rate	Name of Country	Rate
El Salvador	44.3	Colombia	15.9
Bolivia ¹	6.6	Puerto Rico	14.1
U.S.A.	5.8	Costa Rica ¹	5.0
Spain	1.4	Dominican Republic	4.9
Canada	1.2	Finland	4.6
Australia	1.1	Italy	2.4
New Zealand	1.1	Austria	2.1
France	0.8	Portugal	1.6
Ireland	0.6	Belgium	1.4
Scotland	0.6	Western Germany ²	1.2
England and Wales	0.5	Denmark	1.0
		Switzerland	1.0
		Sweden	0.8
		Norway	0.5
		Netherlands	0.4

SOURCE: United Nations, Demographic Yearbook, 1952. New York, 1952, Table 20.

¹ 1947 rate.

² 1949 rate.

Crimes Punishable by Death in the United States

No completely exhaustive and accurate catalogue of crimes punishable by death in the various jurisdictions, federal and state, of the United States seems to exist.² Murder is the only crime which is thus punishable in all the jurisdictions which employ the death penalty, not counting Michigan, where treason alone is a capital offense, and North Dakota and Rhode Island which can apply it only under the rare circumstances previously mentioned.

(2) Richard Reifsnyder, "Capital Crimes in the States." *Jour. of Crim. Law, Criminology and Police Science*, 45:690-3, March-April, 1955. Leonard D. Savitz, "Capital Crimes as Defined in American Statutory Criminal Law." *Jour. of Criminal Law, Criminology and Police Science*, 46:355-63, Sept.-Oct., 1955. A *Brief Survey of Capital Punishment Laws in the United States* (20 pp. mimeo.), prepared by James A. McCafferty, as of 1952, and a table based thereon are available from the Bureau of Prisons, U. S. Department of Justice, Washington 25, D. C.

Usually murder in the first degree is required, but the exact meaning of that term varies somewhat among the states. In some thirty-five jurisdictions, kidnapping is variously defined as a capital offense. Rape is a capital crime in twenty-one jurisdictions, treason in twenty-five, some form of robbery in eleven, lynching in seven, certain uses of explosives in seven, arson in four, trainwrecking (no life lost) in three, and burglary in three. Several states make a variety of assault capital.

Compared with the situation at the beginning of the century, it appears that legislators have in recent decades been reversing an earlier trend. The large number of offenses which had carried death penalties during the colonial period had gradually been reduced so that by the end of the nineteenth century the northern states, at least, had usually retained this punishment only for murder and treason. In the second decade of the present century there was even a considerable movement to abolish the death penalty completely. The Lindberg kidnapping case in the early thirties resulted in the addition of kidnapping for ransom to the list of capital offenses in many states.

The Death Penalty Applied

What the law makes possible is often quite different from what courts and administrators actually do. The actual use of the death penalty is shown by the capital executions that occur. Fortunately we have, beginning with the year 1930, accurate statistics of such events in the United States. Until 1947, the Bureau of the Census gathered annual data from information on the certificates of death reported to its section on vital statistics, and from the discharge schedules supplied by the various state and federal prisons as part of the reporting required for the collection of national statistics on prisoners in state and federal penal institutions for adults. Beginning with 1947 the federal Bureau of Prisons has continued to collect these data; its last report on executions contains the relevant information for the calendar year 1957. Although some

execution statistics do exist prior to 1930, they are not completely reliable. There is no real need to extend our inquiry beyond that year, and, therefore, the data for 1930-1957 will alone be presented.

There were a total of 3568 capital executions in the United States during the twenty-eight years mentioned. In addition, the Army, including the Air Force executed 157 persons, of whom 104 were executed for murder, 52 for rape and one for desertion. These executions by the military are not dealt with further in the tables which will be presented here.

Table 2 shows that 3096 of the executions were for murder. More than half the number involved non-whites, and considerably more than half occurred in the states of the South, where more than twice as many Negroes were executed as were whites. New York led with 309 executions, followed by Georgia with 280, California with 242, North Carolina with 205, Texas with 189, Ohio with 158, and Pennsylvania with 146. There were nearly four times as many Negroes as whites executed in Georgia and nearly three times as many in North Carolina. Only 29 women figured among the victims; in twenty-nine of the jurisdictions no woman was executed for murder.

Table 3 illustrates the use of the death penalty for other crimes than murder. Of the 472 executions involved, only two had female victims and both of these were federal cases, one kidnapping and one espionage case. Aside from the federal executions, there were 3 for kidnapping in the Northeast area and 5 on the West coast. California executed 4 prisoners for aggravated assault. All the rest of the executions in the states occurred in the South and in Missouri. Of these, 409 were for rape, 20 for armed robbery, and 11 for burglary. Ninety per cent of those executed for rape, 80 per cent of those executed for armed robbery and all of those executed for burglary were Negroes. In six Southern states (Va., W. Va., Fla., Miss., La., and Okla.) all the 89 executions for rape involved Negroes.

TABLE 2

EXECUTIONS FOR MURDER, UNITED STATES, 1930-1957, BY JURISDICTION AND RACE

(Source: *National Prisoner Statistics*, No. 18, Feb. 1958. Table 4)

Figures in parentheses represent females

Region and State	Total	White	Negro	Other
United States	3096(29)	1542(18)	1516(11)	38
Federal	15	11	3	1 ^a
Northeast	575(7)	408(5)	160(2)	7
N.H.	1	1	—	—
Vt.	4	4	—	—
Mass.	27	25	2	—
Conn.	18	15	3	—
N.Y.	309(5)	226(4)	78(1)	5 ^b
N.J.	70	44	24	2 ^c
Pa.	146(2)	93(1)	53(1)	—
North Central	364(4)	236(3)	126(1)	2
Ohio	158(3)	98(2)	59(1)	1 ^d
Ind.	40	30	10	—
Ill.	86(1)	57(1)	29	—
Iowa	16	16	—	—
Mo.	50	25	25	—
S.D.	1	1	—	—
Neb.	3	2	—	1 ^a
Kan.	10	7	3	—
South	1706(14)	540(6)	1158(8)	8
Del.	8(1)	4(1)	4	—
Md.	41	7	34	—
D.C.	38	3	35	—
Va.	61	14	47	—
W. Va.	33	25	8	—
N.C.	205(2)	55	147(2)	3 ^a
S.C.	115(2)	28(1)	87(1)	—
Ga.	280(1)	60	220(1)	—
Fla.	115	46	69	—
Ky.	87(1)	46(1)	41	—
Tenn.	66	22	44	—
Ala.	100(2)	23(2)	77	—
Miss.	122(1)	28	94(1)	—
Ark.	85	23	61	1 ^a
La.	112(2)	30(1)	82(1)	—
Okla.	49	35	11	3 ^a
Texas	189	91	97	1 ^a
West	436(4)	347(4)	69	20
Mont.	6	4	2	—
Idaho	3	3	—	—
Wyo.	6	5	1	—
Colo.	41	35	5	1 ^e
N.M.	7	5	2	—
Ariz.	31(1)	24(1)	7	—
Utah	11	11	—	—
Nev.	27	25	2	—
Wash.	44	37	5	2 ^f
Ore.	18	15	3	—
Calif.	242(3)	183(3)	42	17 ^g

^a American Indian(s).^b 3 Chinese, 1 Filipino, 1 American Indian.^c 1 American Indian, 1 Filipino.^d 1 Chinese.^e Japanese.^f 1 American Indian, 1 Chinese.^g 10 Filipinos, 3 Chinese, 1 Japanese, 3 American Indians.

TABLE 3

EXECUTIONS, UNITED STATES, 1930-57, FOR OTHER OFFENSES THAN MURDER;
BY RACE AND JURISDICTION(Source: *National Prisoner Statistics*, No. 18, Feb., 1958, Table 4)

Region and State	OFFENSE								
	Total		Rape		Armed		Burgl.	Kidn.	Es- Aggr. pion. ass.
	White	Negro	W.	N.	W.	N.			
Total	75	397	41	370	5	16	11	17	8 4 ¹
	472		411		21				
Federal	16	—	2	—	1	—	—	5 ²	8 ² —
Northeast	3	—	—	—	—	—	—	3	— —
N.Y.	2	—	—	—	—	—	—	2	— —
N.J.	1	—	—	—	—	—	—	1	— —
North Central	1	7	1	7	—	—	—	—	— —
Mo.	1	7	1	7	—	—	—	—	— —
South	46	390 ³	38	363 ³	4	16	11	4	— —
Del.	1	3	1	3	—	—	—	—	— —
Md.	6	18	6	18	—	—	—	—	— —
D.C.	—	2	—	2	—	—	—	—	— —
Va.	—	20	—	20	—	—	—	—	— —
W. Va.	3	1	—	1	—	—	—	3	— —
N. Car.	4	51 ³	4	42 ³	—	—	9	—	— —
S. Car.	4	36	4	35	—	—	—	—	— —
Ga.	3	59	3	54	—	5	—	—	— —
Fla.	—	29	—	29	—	—	—	1	— —
Ky.	4	11	1	9	3	2	—	—	— —
Tenn.	4	21	4	21	—	—	—	—	— —
Ala.	2	25	2	18	—	5	2	—	— —
Miss.	—	19	—	16	—	3	—	—	— —
Ark.	1	17	1	17	—	—	—	—	— —
La.	—	17	—	17	—	—	—	—	— —
Okla.	1	4	—	4	1	—	—	—	— —
Tex.	12	58	12	57	—	1	—	—	— —
West	9	1	—	—	—	—	—	5	— 4 ¹
Wash.	1	—	—	—	—	—	—	1	— —
Calif.	8	—	—	—	—	—	—	4	— 4 ¹

¹ By prisoner under life sentence.² One female.³ Two American Indians.

TABLE 4

CAPITAL EXECUTIONS IN THE UNITED STATES; 1930-57¹

Region and State	Total	'30	'31	'32	'33	'34	'35	'36	'37	'38	'39	'40	'41	'42	'43
Federal	3568	155	153	140	159	168	199	194	147	190	159	124	123	147	135
Northeast	31	1	—	—	—	—	—	3	—	5	—	—	—	6	1
N.H.	578	36	36	31	24	28	36	28	23	30	28	20	22	23	19
Vt.	1	—	—	—	—	—	—	—	—	—	1	—	—	—	—
Mass.	4	—	—	1	—	—	—	—	—	—	—	—	—	—	—
Conn.	27	—	2	1	—	4	4	2	—	3	2	—	1	2	3
N.Y.	18	2	—	—	—	—	—	1	1	1	—	2	—	—	2
N.J.	311	15	12	20	18	15	16	21	14	7	15	13	15	18	12
Pa.	71	10	6	4	3	1	6	3	—	7	—	1	1	2	—
North	146	9	16	5	3	8	10	1	8	12	10	4	5	1	2
Central	372	20	22	17	25	21	30	11	17	36	19	9	9	8	6
Ohio	158	8	10	7	11	7	10	6	1	12	10	2	4	2	5
Ind.	40	1	1	2	3	4	2	2	5	8	3	—	1	1	—
Ill.	86	6	10	5	5	8	10	2	7	4	4	4	2	4	1
Iowa	16	—	1	—	—	—	3	—	—	4	—	1	1	—	—
Mo.	58	5	—	3	6	2	5	1	4	8	2	2	1	1	—
S.D. ²	1	x	x	x	x	x	x	x	x	x	—	—	—	—	—
Neb.	3	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Kan. ²	10	x	x	x	x	x	—	—	—	—	—	—	—	—	—
South	2142	67	78	81	93	100	110	128	92	101	93	83	76	96	89
Del.	12	2	—	—	—	—	3	1	2	—	—	—	1	1	—
Md.	65	1	1	2	1	1	4	2	1	2	1	6	5	5	6
D.C.	40	1	1	4	3	6	—	1	2	1	1	—	—	2	1
Va.	81	3	2	2	1	—	3	5	3	5	4	4	1	3	2
W. Va.	37	2	3	2	3	—	2	—	4	4	—	2	—	—	—
N.C.	260	10	8	8	5	20	11	23	12	19	15	10	9	7	14
S.C.	154	5	9	6	6	11	8	6	2	4	10	5	9	7	7
Ga.	342	7	18	12	14	13	23	11	16	15	8	14	6	11	17
Fla.	145	1	7	1	5	1	6	11	6	2	4	3	10	11	7
Ky.	102	2	—	4	9	3	6	11	5	4	8	2	3	6	8
Tenn.	91	2	1	—	4	9	—	9	10	2	10	4	5	5	5
Ala.	127	5	2	4	3	5	2	17	4	9	9	9	4	9	5
Miss.	141	1	4	8	5	8	2	7	6	5	2	6	5	6	4
Ark.	103	10	1	2	4	3	9	5	5	7	7	4	5	5	2
La.	129	5	7	13	7	7	6	3	4	4	2	4	6	6	5
Okla.	54	2	4	4	14	1	5	2	2	—	—	2	1	1	2
Tex.	259	8	10	9	9	12	20	14	8	18	12	8	6	11	4
West	410	31	17	11	18	19	23	25	15	18	19	12	16	14	16
Mont.	6	—	—	—	1	—	2	—	—	1	1	—	—	—	1
Ida.	3	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Wyo.	6	2	—	—	1	—	—	—	1	—	—	1	—	—	—
Colo.	41	7	4	2	2	1	3	1	1	—	4	—	2	2	2
N.M.	7	—	—	—	2	—	—	—	—	—	—	—	—	—	—
Ariz.	31	2	1	—	—	4	—	3	4	1	2	1	—	—	5
Utah	11	—	—	—	—	—	—	1	—	1	—	—	—	1	1
Nev.	27	1	1	1	1	1	—	—	1	—	2	1	—	1	1
Wash.	45	4	1	2	1	2	1	3	—	4	5	2	3	—	2
Ore.	18	—	1	—	—	—	—	—	—	—	1	1	1	1	1
Calif.	250	15	9	6	10	11	17	17	8	11	4	6	10	9	3

¹ Source: *National Prisoner Statistics*, Table 3, No. 12, April, 1955, and No. 18, February, 1958.

² x = no death penalty for murder.

TABLE 4 (Continued)

CAPITAL EXECUTIONS IN THE UNITED STATES; 1930-57

4 20	'45 117	'46 131	'47 152	'48 119	'49 119	'50 82	'51 105	'52 83	'53 62	'54 81	'55 76	'56 65	'57 65	Region and State
—	1	—	—	5	—	1	—	—	4	1	—	1	2	Federal
26	4	13	26	13	18	10	12	9	9	16	25	9	4	Northeast
—	—	—	—	—	—	—	—	—	—	—	—	—	—	N.H.
—	—	—	1	—	—	—	—	—	—	2	—	—	—	Vt.
—	—	1	2	—	—	—	—	—	—	—	—	—	—	Mass.
1	1	3	—	1	—	—	—	—	—	—	3	—	—	Conn.
20	—	4	12	6	14	3	8	3	5	8	7	6	4	N.Y.
2	—	—	—	3	2	1	1	4	—	2	8	1	—	N.J.
3	—	5	11	3	2	6	3	2	4	4	7	2	—	Pa.
—	—	—	—	—	—	—	—	—	—	—	—	—	—	North
10	13	7	12	8	23	10	7	12	7	6	1	4	2	Central
2	7	2	5	7	15	4	4	4	4	4	—	4	1	Ohio
—	1	1	—	—	3	1	1	—	—	—	—	—	—	Ind.
2	1	—	1	—	2	3	—	4	1	—	—	—	—	Ill.
1	1	2	—	—	1	—	—	1	—	—	—	—	—	Iowa
2	2	2	3	—	2	1	1	1	2	—	1	—	1	Mo.
—	—	—	1	—	—	—	—	—	—	—	—	—	—	S.D. ²
—	1	—	—	—	1	—	—	1	—	—	—	—	—	Neb.
3	—	—	2	—	—	1	1	1	—	2	—	—	—	Kan. ²
69	75	99	102	84	59	52	69	51	28	44	38	41	44	South
—	—	—	—	—	—	—	—	—	—	—	—	—	—	Del.
4	1	1	—	—	—	—	—	—	1	1	1	—	1	Md.
—	1	4	1	2	5	—	—	2	1	—	—	—	1	D.C.
3	5	9	5	3	—	2	10	1	—	2	1	—	2	Va.
—	2	1	1	4	1	—	3	—	1	1	—	1	—	W. Va.
10	9	13	22	8	10	5	3	1	5	—	1	1	1	N.C.
4	4	5	13	5	2	3	1	7	—	5	4	4	2	S.C.
10	19	16	16	13	8	13	7	11	8	12	4	6	14	Ga.
7	5	5	6	7	4	1	8	4	2	7	4	7	3	Fla.
—	4	4	1	3	3	2	1	3	1	1	5	3	—	Ky.
—	2	5	3	5	3	1	—	—	—	—	4	—	2	Tenn.
2	3	9	2	2	5	4	—	4	2	4	—	1	2	Ala.
13	4	9	5	8	—	3	8	3	—	1	8	8	2	Miss.
4	2	4	6	2	4	3	5	2	—	1	—	1	—	Ark.
3	4	2	8	6	3	2	7	3	2	—	2	1	7	La.
—	2	2	1	2	—	—	3	—	1	—	—	1	2	Okla.
9	4	5	8	11	8	13	13	10	4	9	4	7	5	Tex.
15	24	12	12	9	19	9	17	11	14	14	12	10	13	West
—	—	—	—	—	—	—	—	—	—	—	—	—	—	Mont.
—	—	—	—	—	—	—	2	—	—	—	—	—	1	Ida.
1	—	—	—	—	—	—	—	—	—	—	—	—	—	Wyo.
—	3	—	2	—	2	—	1	—	—	—	—	1	1	Colo.
—	—	1	1	—	—	—	—	—	—	2	—	—	—	N.M.
—	3	—	—	—	—	1	1	—	—	—	2	—	1	Ariz.
1	1	—	—	—	—	—	2	—	—	—	1	2	—	Utah
2	—	1	1	—	3	1	3	1	1	3	—	—	—	Nev.
2	1	2	1	—	3	—	2	—	2	—	—	1	1	Wash.
2	3	2	—	1	—	—	—	1	3	—	—	—	—	Ore.
7	13	6	7	8	11	7	6	9	8	9	9	5	9	Calif.

TABLE 5

METHOD OF EXECUTION, 1930 AND 1957 IN THE UNITED STATES AND THE MEAN ANNUAL NUMBER OF EXECUTIONS BY FIVE-YEAR PERIODS, 1930-54 AND THE THREE-YEAR PERIOD, 1955-57, BY REGION AND STATE

Region and State	Method of execution		Mean annual number of executions					
	1930	1957	1930-34	1935-39	1940-44	1945-49	1950-54	1955-57
United States ..			155.0	177.8	129.8	127.6	82.6	68.7
Federal	H	(*)	.2	1.6	1.4	1.2	1.2	1.0
Northeast			31.0	29.0	22.0	14.8	10.2	12.7
N.H.	H	H	—	.2	—	—	—	—
Vt.	E	E	.2	—	—	.2	.4	—
Mass.	E	E	1.4	2.2	1.2	.6	—	—
Conn.	H	E	.4	.6	1.0	1.0	—	1.0
N.Y.	E	E	16.0	14.6	15.6	7.2	5.4	5.7
N.J.	E	E	4.8	3.2	1.2	1.6	1.6	3.0
Pa.	E	E	8.2	8.2	3.0	4.2	3.8	3.0
North Central .			21.0	22.6	8.4	12.6	8.4	2.3
Ohio	E	E	8.6	7.8	3.0	7.2	4.0	1.7
Ind.	E	E	2.2	4.0	.4	1.0	.4	—
Ill.	E	E	6.8	5.4	2.6	.8	1.6	—
Iowa	H	H	.2	1.4	.6	.8	.2	—
Mo.	H	G	3.2	4.0	1.2	1.8	1.0	.7
S.D.	—	E	x	x	—	.2	—	—
Neb.	E	E	—	—	—	.4	.2	—
Kan.	—	H	x	—	.6	.4	1.0	—
South			83.8	104.8	82.6	83.8	48.8	41.0
Del.	H	H	.4	1.2	.4	.4	—	—
Md.	H	G	1.2	2.0	5.2	3.8	.4	1.7
D.C.	E	E	3.0	1.0	.6	2.6	.6	.3
Va.	E	E	1.6	4.0	2.6	4.4	3.0	1.0
W. Va.	H	E	2.0	2.0	.4	1.8	1.0	.3
N.C.	E	G	10.2	16.0	10.0	12.4	2.8	1.0
S.C.	E	E	7.4	6.0	6.4	5.8	3.2	3.3
Ga.	E	E	12.8	14.6	11.6	14.4	10.2	8.0
Fla.	E	E	3.0	5.8	7.6	5.4	4.4	4.7
Ky.	E	E	3.6	6.8	3.8	3.0	1.6	2.7
Tenn.	E	E	3.2	6.2	3.8	3.6	.2	2.0
Ala.	H	E	3.8	8.2	5.8	4.2	2.8	1.0
Miss.	H	G	5.2	4.4	6.8	5.2	3.0	6.0
Ark.	E	E	4.0	6.6	4.0	3.6	2.2	.3
La.	H	E	7.8	3.8	4.8	4.6	2.8	3.3
Okla.	E	E	5.0	1.8	1.2	1.4	.8	1.0
Texas	E	E	9.8	14.4	7.6	7.2	9.8	5.3
West			19.2	20.0	14.6	15.2	13.0	11.7
Mont.	H	H	.2	.8	.2	—	—	—
Idaho	H	H	—	—	—	—	.4	.2
Wyo.	H	G	.6	.2	.4	—	—	—
Colo.	H	G	3.2	1.8	1.2	1.4	.2	.7
N.M.	H	G	.4	—	—	.4	.4	.3
Ariz.	H	G	1.4	2.0	1.2	.6	.4	1.0
Utah	SH	SH	—	.4	.6	.2	.4	1.0
Nev.	G	G	1.0	.6	1.0	1.0	1.8	—
Wash.	H	H	2.0	2.6	1.8	1.4	.8	.7
Ore.	H	G	.2	.2	1.2	1.2	.8	—
Calif.	H	G	10.2	11.4	7.0	9.0	7.8	7.7

* Hanging, if execution occurs in a federal prison; otherwise, since 1937, the method established by state law is used, if the execution occurs in a state or county prison.

These tables show clearly that whatever crimes may have been made punishable by death in the United States, this penalty is actually executed only for a few of them. Under federal jurisdiction there were 15 executions for murder, 2 for rape, 1 for armed robbery, 5 for kidnapping, and 8 for espionage. In the states 3081 were executed for murder, 410 for rape, 20 for armed robbery, 11 for burglary, 12 for kidnapping, and 4 for aggravated assault by a prisoner.

Table 4 gives in some detail the history of executions in the regions and states, year by year, 1930-1957. It will be observed that the total number each year rose until 1935 and 1936 and that since then there has been a gradual even though uneven decline which has become rather rapid since 1951. The nature of that movement can better be seen from Table 5, which gives the average annual number of executions in each region and state for six periods of years. Comparing these figures for the period with the peak rate with the figure for the 1955-57 period we get the following results:

Northeast region (1930-34)	Annual average no. of exec.
31;	(1955-57) 12.7
North Central (1935-39)	Annual average no. of exec.
22.6;	(1955-57) 2.3
South (1935-39)	Annual average no. of exec. 104.8;
	(1955-57) 41.
West (1935-39)	Annual average no. of exec. 20;
	(1955-57) 11.7

A part of the reason for the decline noted is undoubtedly due to the drop in the homicide rate as reflected in deaths due to homicide, but in none of the states where the greatest proportionate declines are observed has the homicide rate fallen as much or as rapidly. The crude homicide death rate in North Carolina, for instance, averaged annually about 10.5 per 100,000 population in 1935-39 and dropped to 7.7 in 1955, or about 27 per cent, while the

annual number of executions dropped from 16 to 1. Many other states showed equally spectacular changes. One is forced to assume either that the number of capital crimes declined during the period examined very much faster than the homicide death rates would indicate; that the law enforcement policies in handling capital offenses by detection and prosecution changed greatly; that sentences to death instead of to life imprisonment became proportionately fewer; that the commutation of death sentences became increasingly used; or that several of these factors operated simultaneously. It may well be that the decline in the actual application of the death penalty is in part a reflection of the growth of abolition sentiment since the last war.

One might wonder, if the decline mentioned may not be due to the removal of mandatory sentences to death upon conviction for first degree murder and the resultant placement of the choice of death or life imprisonment into the hands of the jury or the judge, or both—usually the first of these methods mentioned. It is probably true that this policy has had its effects, but it must be kept in mind that at the beginning of the period we have been studying, only Connecticut, the District of Columbia, Massachusetts, New Mexico, New York, North Carolina, and Vermont had a mandatory death penalty for murder in the first degree.³ By the end of the period, only New York remained in this class but had, in 1937, made a life sentence possible for felony-murder. New Mexico had abandoned the mandatory penalty in 1939, North Carolina in 1949, Connecticut and Massachusetts in 1951, and Vermont (except for “an unrelated second offense”) in 1957. It seems plausible that the North Carolina act may have contributed to the great drop in the number of executions since that year in that state, although the act of 1953 which gained

(3) Raymond T. Bye, “Recent history and present status of capital punishment in the United States.” *Jour. of the Amer. Inst. of Crim. Law and Criminology*, 27:234-45, Aug., 1926. It is hardly worth mentioning that North Dakota and Rhode Island had a mandatory death penalty only for murder committed by prisoner serving a life sentence for that crime.

life imprisonment on a plea of guilty may have had a share in it. But in Massachusetts and Connecticut the removal of the mandatory penalty had apparently no effect. There, it seems as though the legislation merely endorsed what juries had been doing for many years, namely bringing in verdicts for second degree murder. Massachusetts had its last execution in 1947 and Connecticut none between 1948 and 1955.

The other states in the Union had no mandatory penalty for murder during 1930-1957, and yet the average annual number of executions dropped in the North Central states from 21 in 1930-34 to 2.3 in 1955-57, and in the South, *excluding North Carolina*, from 73.6 to 40.0.

If, as seems likely, the decline in the use of the death penalty is to a large extent due to the growing reluctance of juries and judges to inflict that punishment,⁴ it should be possible to test it by an examination of the practice of commuting death sentences by the pardon authorities. If courts increasingly reserve the penalty for a more and more select class of murderers,—the “worst” ones, so to speak—the pardon authorities would presumably find it more and more difficult to commute their sentences, assuming that such authorities are not themselves afflicted by abolition sentiments. Unfortunately we lack studies of this problem. One recent bit of research may have some interest in this connection.

We have noted in Table 4 the trend of executions in North Carolina. During the period 1909-1933, 70.7 per cent of the white murderers received on a death sentence in the Central Prison at Raleigh, and 45 per cent of the Negro murderers received commutations, while during 1934-54, the corresponding figures were 47.4 and 32.2 respectively. One is tempted to assume that during the earlier period courts were prone to use the death sentence more indiscriminately and thereby place the pardon authorities in greater dilem-

(4) Early in 1958, a national poll by Elmo Roper showed 42 per cent of those questioned in favor of the death sentence, 50 per cent opposed to it, and 8 per cent undecided.

mas, and that an important reason for the trend noted lies in a changing attitude toward the death penalty on the part of North Carolina juries and judges.⁵

Considerable shifts in the method of execution also occurred during the twenty-eight years studied. The old time method of hanging had already lost ground by 1930, the electric chair having been adopted by 19 states and the District of Columbia, but it was still used in 19 states and by the federal government. Utah allowed the condemned to choose between a firing squad and the gallows, and Nevada was the lone user of the gas chamber. By 1957, the federal government had for twenty years been using whatever method was practised in the state where a federal prisoner was executed; it had almost ceased to put prisoners to death in federal prisons and instead made use of the state facilities. Four states had substituted the electric chair for the gallows (Conn., W. Va., Ala., and La.) and 9 had changed from hanging to the gas chamber (Mo., Md., Miss., Wyo., Colo., N. M., Ariz., Ore., and Calif.). North Carolina, after many years of using the electric chair, had also accepted the gas chamber. Kansas and South Dakota had joined the list of capital punishment states in 1935 and 1939 respectively, the former providing for hanging and the latter for electrocution as the method of execution. In 1957, then, of the forty-two state jurisdictions and the District of Columbia, only 7 were using the gallows, while 24 employed electrocution and 11 the gas chamber; Utah continued its dual system.

THE CONTROVERSY ABOUT THE DEATH PENALTY

Questions of the legitimacy or the propriety of this or that form of punishment of criminals have frequently been raised in the past, and the controversies have sooner or later ended with the abolition or modification of the punishment. The death penalty, one of the oldest of all punishments, has been under attack for centuries, espe-

(5) Elmer H. Johnson, "Selective factors in capital punishment." *Social Forces*, 36:165-69, Dec., 1957.

cially since Beccaria published his influential essay *On Crimes and Punishments* in 1764. The movement for the abolition of capital punishment, the effect of which has already been described, can be said to date from that year. Since then the struggle about this punishment has been one between ancient and deeply rooted beliefs in retribution, atonement or vengeance on the one hand, and, on the other, beliefs in the personal value and dignity of the common man that were born of the democratic movement of the eighteenth century, as well as beliefs in the scientific approach to an understanding of the motive forces of human conduct, which are the result of the growth of the sciences of behavior during the nineteenth and twentieth centuries. If these newer trends of our thinking continue undisturbed the death penalty will disappear in all the countries of Western culture sooner or later.

The arguments for or against the death penalty may be divided into two classes. One of them contains what might be called the *dogmas*. Among the dogmas that uphold the death penalty, one might mention, in particular, the following: (1) the death penalty is the only punishment by which the murderer can really *expiate* his crime; (2) the death penalty is the only *just* punishment for murder; (3) the death penalty is *more humane* than life imprisonment. Against the death penalty we find arrayed dogmas such as these: (1) man has no right to take away life, the gift of the Creator; (2) retaliation is not a defensible basis for a penal system; (3) the death penalty is unjust.

Variations on the above themes could be added. All dogmas have one thing in common. They rest on absolute or categorical principles. They must be accepted on faith. Those who embrace them most fully and earnestly would maintain that faith even if experience would demonstrate that the use of the death penalty is socially harmful or beneficial, or lacks or possesses this or that practical value.

In the other class fall the arguments which might be called *empirical* or *utilitarian*. It is characteristic of mod-

ern man, reared in an age of scientific orientation, that he wishes to use scientific thoughtways in the approach to his problems. He does not like to be considered irrational. When he formulates public policies he wants to think that such policies are based on scientific facts and not alone on sentiments and emotions, but the strength of the latter is often such that he is led to invent or pervert facts in order to justify actions that are basically prompted by his feelings. Therefore it is often difficult to determine whether or not those who advance utilitarian arguments for or against the death penalty base their position fully on them or merely use them to disguise irrational feelings which really motivate their behavior but which they cannot or do not wish to expose.

Whether these utilitarian arguments are or are not basic to those who use them, they differ from dogmas in one fundamental way. They lay no claim to infallibility. They rest on evidence showing, or purporting to show, that the death penalty, as practiced, produces certain demonstrable effects.

The main utilitarian arguments focus on the problem of deterrence. The supporters of the death penalty claim that it is a *specific* deterrent. They say that if there were no capital punishment more people would commit murders. Some say that the restraining influence of the death penalty is particularly strong on psychopaths or that it stays the hand of the fleeing criminal who might otherwise turn on his pursuer and kill him or a witness to the crime in order to escape capture. The argument is, of course, an offshoot of the more inclusive one which holds that the threat of punishment in general has deterrent power, and in its purest form it would hold that no other kind of punishment could possess the same preventive effect as the death penalty.

Another argument of the same class is that, were the death penalty removed, an outraged community would in certain cases resort to lynch justice and the victim's family to private vengeance or vendetta.

Occasionally one hears the arguments that the death penalty has eugenic value in that it prevents the procreation of dysgenic human strains, that it is more economical than imprisonment or that it affords society maximum protection by removing the offender permanently from society.)

The opponents of the death penalty either challenge the validity of the above claims or maintain that in so far as they are valid the same effects could be produced by other and to them more acceptable means. They admit that the death penalty prevents an executed offender from causing future injury to society, but they say that this certainty is bought at the risk of possible miscarriages of justice, the irreparable nature of the punishment preventing the later rectification of judicial errors. They also claim that when juries or judges regard a death penalty as too severe, they may render verdicts contrary to facts and thus make a mockery of justice. They point to the fact that the existence of the death penalty sometimes incites to murder and they claim that no evidence exists to prove that it is a specific preventive of murder.

It is a curious fact that the chief arguments for or against the death penalty have remained remarkably unchanged since the beginning of the debate. In the meanwhile, however, there have been great changes in their meaning. If, as many people say, the death penalty is a moral necessity and the only just retribution for crime, or that the sense of justice of a people requires it, it is obvious that the last two centuries have seen great transformations in concepts of morality and justice. We have abolished torturing forms of punishment like breaking on the wheel and burning at the stake; we no longer see either justice or morality in hanging for theft. If, on the other hand, we say that the death penalty is a great preventive because the fear of such an ignominious death holds prospective criminals in check, history shows that we increasingly tend to substitute other punishments for it, that

we have exerted ourselves in discovering ways and means to make executions as painless and rapid as possible, and that we have further reduced prevention by hiding executions from public view and giving them the least possible official publicity. These incontrovertible facts signify that while a sense of justice and high moral concepts are constant in man, because they are necessary to all social life, the ideas of what is just and moral change. The people of some nations that formerly regarded it as just, moral and proper to hang a thief, brand a rogue and burn a witch, now either consider it immoral to take life at all as a punishment or immoral to take it except in extremely abnormal circumstances such as in wartime. Therefore it seems obvious that the existence of the death penalty does not depend on any immutable principle. Like all social policies it depends on changes in attitudes and beliefs which are influenced by the conditions and circumstances of social life.

Unlike the dogmas, the statements of fact contained in the utilitarian arguments can be subjected to a scientific examination. We shall dismiss some of these arguments briefly. As for the eugenic argument, for instance, even if one could show that murderers generally have more than a normal number of undesirable traits, neither their execution nor their sterilization would have any measurable effect on the frequency of such traits in future generations, as any geneticist would be able to show. In any case sterilization would effectively prevent the transmission of such traits. As for the economic argument, it obviously rests on the assumption that murderers in prison cannot be self-supporting as a group and that they must always remain a financial burden on the public unless they are executed. However, the death penalty can hardly be defended on this basis. In a well-organized penal system, murderers as a group can undoubtedly earn their keep. If the system is not well-organized the fault rests with the public or the administration. No one would seriously sug-

gest that people should be executed, not because of their crimes but because the state has made it impossible for them to be self-supporting during imprisonment because it has taken no proper steps to achieve that end.

In this report we shall examine in greater detail a few of the utilitarian claims about the death penalty. No exhaustive treatment of any one of them is possible. It would seem desirable to find an answer to the following questions at least. (1) Is it true that the death penalty is a specific deterrent to murder? A subsidiary question in this connection could be examined. Is it true that the death penalty effectively protects law enforcement officers in the exercise of their duties? (2) Is it true that innocent persons are, at times, executed? (3) Is it true that the availability of the death penalty at times acts as a stimulus to murder? (4) Is it true that imprisonment of murderers does not afford adequate protection of society, because they will remain a threat to fellow prisoners or the prison staff while incarcerated and may, if pardoned or paroled, again commit murder? (5) Is it true that the removal of the death penalty would result in a resort to lynch justice?

DETERRENCE.

Among the utilitarian arguments there is no doubt that the most widely used is the argument that the death penalty is a social necessity because it effectively deters people from committing murder.

When we think of deterrence, restraint or prevention—these terms are used interchangeably—we usually think of the effect which a punishment has (1) on the future conduct of the person punished and (2) on the future conduct of others. Some writers distinguish these two effects by calling the one individual and the other general prevention. In the case of the executed death penalty individual prevention is, of course, completely effective. This is the one executed punishment in connection with which general prevention alone can be studied.

The process of deterrence is obviously a psychological one. It presumes in this connection that life is regarded by man as a precious possession which he wishes to preserve more eagerly, perhaps, than any other of his attributes. He would therefore defend it to the utmost against every threat, including the threat of capital execution. Every such threat, it is assumed, arouses his fear and as a rational being he would try to conduct himself in such a manner that the threat would be avoided or that, once materialized, it would be nullified. It is further assumed that the potential threat is made vivid to him by the fact that he knows that the death penalty exists.

If the death penalty carries a potential threat which has a restraining influence on human conduct, we may assume that the greater the threat the more effective it would be. Now, the term "death penalty" as used in discussions concerning its deterrent power may mean many things. First, we have the death penalty defined by law as a mandatory or discretionary punishment for crime. Then we have the death penalty that looms as a possible threat to a person arrested for, or accused of a capital offense, and the death penalty pronounced but not yet executed. Finally, we have the death penalty actually applied to the offender. Presumably, the potential power of deterrence of the death penalty is not the same at all these levels of manifestation. Were it present in the law alone it would be completely robbed of its threat. Death is still the legal punishment for murder in Belgium, but it has, except for one "accident" so to speak and after World War II against collaborators with the enemy, never been applied since 1863. Under such circumstances even the knowledge that persons are still arrested and prosecuted for murder and even sentenced to death in Belgium would contain no threat of death to potential murderers in that country. We arrive then at the conclusion that if the death penalty is to have any restraining effect there must be an adequate threat of execution,

but no one has ventured to calculate how great the risk of possible execution must be in order to constitute an adequate threat.

It seems reasonable to assume that if the death penalty exercises a deterrent or preventive effect on prospective murderers, the following propositions would be true:

- (a) Murders should be less frequent in states that have the death penalty than in those that have abolished it, other factors being equal. Comparisons of this nature must be made among states that are as alike as possible in all other respects—character of population, social and economic condition, etc.—in order not to introduce factors known to influence murder rates in a serious manner but present in only one of these states.
- (b) Murders should increase when the death penalty is abolished and should decline when it is restored.
- (c) The deterrent effect should be greatest and should therefore affect murder rates most powerfully in those communities where the crime occurred and its consequences are most strongly brought home to the population.
- (d) Law enforcement officers would be safer from murderous attacks in states that have the death penalty than in those without it.⁶

Prior to any analysis of available data we are compelled to make certain assumptions. First we must decide what element in the death penalty gives it a maximum of deterrent power. We can assume—those who debate the

(6) The most extensive, recent and well documented discussion of deterrence is found in the *Report of the Royal Commission on Capital Punishment, 1949-53* (506 pp. London: Her Majesty's Stationery Office, 1953), Appendix 6, pp. 328-380, "The Deterrent Value of Capital Punishment." See also Karl F. Schuessler, "The Deterrent Influence of the Death Penalty". *The Annals of the American Academy of Political and Social Science*, 284:54-62, Nov., 1952.

issue do it generally speaking—that it is the execution which by its finality is the strongest agency of deterrence. We should therefore examine the effect of executions on murder rates.

This brings us to a second necessary assumption. We do not know with any great degree of accuracy how many murders *punishable by death* occur. In the United States, for instance, where only murders in the first degree or similar murders are subject to the death penalty, no accurate statistics of such offenses exist, yet this is the only type of murder which people are presumably to be deterred from committing. Most deaths are no doubt recorded, but among deaths regarded as accidental or due to natural causes or suicide there are no doubt some successful murders. Where the killer never becomes known it is often impossible to determine if the death was the result of a capital murder. This is, of course, a problem which exists in all countries. We are everywhere compelled to use other statistics than those of strictly *capital* homicides.

Most advanced countries today possess statistics of reported deaths classified by cause of death. One of these is homicide, i.e., deaths wilfully caused by others. Students of criminal statistics have examined these data with some care and have arrived at the conclusion that the homicide death rate is adequate for an estimate of the trend of murder. This conclusion is based on the assumption that the *proportion* of capital murders in the total of such deaths remains reasonably constant. Accepting this assumption, we shall examine the relationship between executions and the rates of deaths due to homicide. One may challenge the assumption, but the fact remains that there are no better statistical data on which to base arguments about deterrence. Other statistics, such as conviction statistics, have greater defects.

*Comparative Crude Homicide Death Rates in States With
and States Without the Death Penalty, 1920-1955.*

Homicide death rates ⁷ vary enormously in the United States from state to state. In 1955, for instance, Vermont showed a rate of .5 per 100,000 estimated population, and New Hampshire and Wisconsin 1.1, while Georgia and Alabama had 11.4 and 12.6, respectively. It is not uncommon to see in the writings of the opponents of the death penalty comparisons made between the homicide rates of death penalty states and those of abolition states, but such comparisons must be made with discretion. The abolition states in the Union have always had lower homicide rates than the others, not because they were without the death penalty but because they differed from the others in social organization, composition of population, economic and social conditions, etc. The only comparison that is at all defensible is one of states, some with and others without the death penalty, which are closely similar in the above respects.

In Tables 6-8 there are presented data on crude homicide rates and executions in various American states. Table 6 and Diagrams I and II permit comparisons among the New England states of Maine, New Hampshire, Vermont, Massachusetts, Rhode Island and Connecticut, belonging to the same culture area. Two of these states, Maine and Rhode Island, have no death penalty. The great similarity in the rates of these states is obviously noticeable.

Table 7 presents homicide rates and executions in the Middle Western states of Michigan, Ohio and Indiana; Minnesota, Wisconsin and Iowa; and North Dakota, South Dakota and Nebraska (Diagrams III, IV and V). The

(7) Homicide death rates used in this report, in text or tables, unless otherwise noted, have been taken from the *Vital Statistics—Special Reports*, published by the National Office of Vital Statistics, Washington, D.C.

states have been grouped in the diagrams so as to place contiguous states together, each group having at least one state in which the death penalty does not exist: Michigan, Minnesota and Wisconsin, and North Dakota and South Dakota (until 1939). Again, each group presents fundamentally similar rates and basic trends. The important thing to be noticed is that whether the death penalty is used or not and whether executions are frequent or not, both death penalty states and abolition states show rates, which suggest that these rates are conditioned by other factors than the death penalty.

Table 8 and Diagram VI present data for Colorado, Kansas and Missouri, contiguous states, somewhat farther to the south of those mentioned above. All these states have the death penalty, but Kansas introduced it only in 1935. The general picture is the same, a rise in the rates of the early 'twenties and a downward trend since then.

TABLE 6

CRUDE HOMICIDE DEATH RATES AND NUMBER OF EXECUTIONS IN CERTAIN
AMERICAN STATES: 1920-1955

Year	Maine*	N.H. Rates	Vt. Exec. Rates Exec.	Mass. Rates Exec.	R.I.*	Conn. Rates Exec.
1920	1.4	1.8	2.3	2.1 1	1.8	3.9 1
1921	2.2	2.2	1.7	2.8	3.1	2.9 2
1922	1.7	1.6	1.1	2.6	2.2	2.9 1
1923	1.7	2.7	1.4	2.8 1	3.5	3.1
1924	1.5	1.5	.6	2.7 1	2.0	3.5
1925	2.2	1.3	.6	2.7	1.8	3.7
1926	1.1	.9	2.2	2.0 1	3.2	2.9 1
1927	1.9	.7	.8	2.1 6	2.7	2.3 2
1928	1.6	1.3	1.4	1.9 3	2.7	2.7
1929	1.0	1.5	1.4	1.7 6	2.3	2.6 1
1930	1.8	.9	1.4	1.8	2.0	3.2 2
1931	1.4	2.1	1.1 1	2.0 2	2.2	2.7
1932	2.0	.2	1.1	2.1 1	1.6	2.9
1933	3.3	2.7	1.6	2.5	1.9	1.8
1934	1.1	1.4	1.9	2.2 4	1.8	2.4
1935	1.4	1.0	.3	1.8 4	1.6	1.9
1936	2.2	1.0	2.1	1.6 2	1.2	2.7 1
1937	1.4	1.8	1.8	1.9	2.3	2.0 1
1938	1.5	1.8	1.3	1.3 3	1.2	2.1 1
1939	1.2	2.3 1	.8	1.4 2	1.6	1.3
1940	1.5	1.4	.8	1.5	1.4	1.8 2
1941	1.1	.4	2.2	1.3 1	.8	2.2
1942	1.7	.2	.9	1.3 2	1.2	2.5
1943	1.7	.9	.6	.9 3	1.5	1.6 2
1944	1.5	1.1	.3	1.4	.6	1.9 1
1945	.9	.7	2.9	1.5	1.1	1.5 1
1946	1.4	.8	1.7	1.4 1	1.5	1.6 3
1947	1.2	.6	1.1 1	1.6 2	1.5	1.9
1948	1.7	1.0	.8	1.4	2.7	1.7 1
1949	1.7	1.5	.5	1.1	.5	1.8
1950	1.5	1.3	.5	1.3	1.5	1.4
1951	2.3	.6	.5	1.0	.9	2.0
1952	1.0	1.5	.5	1.0	1.5	1.7
1953	1.4	.9	.3	1.0	.6	1.5
1954	1.7	.5	1.6 2	1.0	1.3	1.3
1955	1.2	1.1	.5	1.2	1.7	1.3 3

* Maine and Rhode Island have no death penalty for ordinary murder.

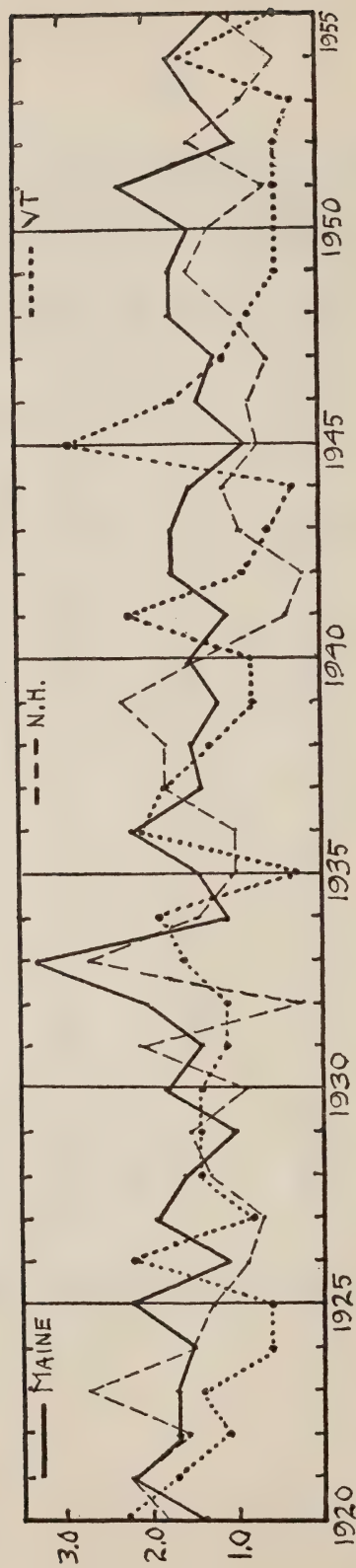


Diagram I. Crude Homicide Death Rates, per 100,000 population, in Maine, New Hampshire, and Vermont: 1920-1955.

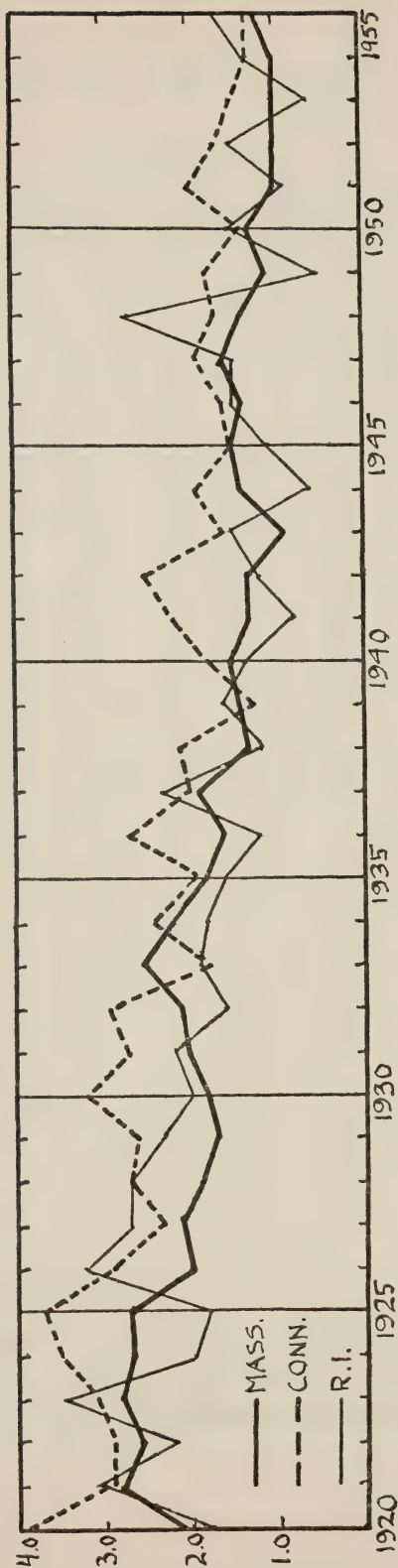


Diagram II. Crude Homicide Death Rates, per 100,000 population, in Massachusetts, Connecticut, and Rhode Island: 1920-1955.

TABLE 7

CRUDE HOMICIDE DEATH RATES AND NUMBER OF EXECUTIONS IN CERTAIN AMERICAN STATES: 1920-1955

Year	Mich.*	Ohio		Ind.		Minn.*	Iowa		Wis.*	N.D.*	S.D.		Neb.	
	Rate	Rate	Ex.	Rate	Ex.	Rate	Rate	Ex.	Rate	Rate	Rate	Ex.	Rate	Ex.
1920	5.5	6.9	3	4.7	2	3.1	**		1.7	**	**	***	4.2	
1921	4.7	7.9	10	6.4		4.4			2.2				4.9	
1922	4.3	7.3	12	5.7	2	3.6		3	1.8				4.5	
1923	6.1	7.8	10	6.1		2.9	2.1	2	2.2				4.1	
1924	7.1	6.9	10	7.3		3.2	2.7	1	1.8	2.1			4.4	
1925	7.4	8.1	13	6.6	1	3.8	2.7	2	2.3	2.0			4.0	
1926	10.4	8.6	7	5.8	3	2.2	2.3		2.6	1.8			2.7	
1927	8.2	8.6	8	6.3	1	2.6	2.4		2.6	1.6			3.5	
1928	7.0	8.2	7	7.0	1	2.8	2.3		2.1	1.0			3.7	
1929	8.2	8.3	5	7.0	1	2.2	2.6		2.3	1.2			3.0	
1930	6.7	9.3	8	6.4	1	3.8	3.2		3.1	3.5	1.9		3.5	
1931	6.2	9.0	10	6.5	1	2.9	2.5	1	3.6	2.0	2.3		3.6	
1932	5.7	8.1	7	6.7	2	2.9	2.9		2.8	1.2	1.6		3.7	
1933	5.1	8.2	11	5.6	3	3.5	2.9		1.9	1.2	1.7		3.2	
1934	4.2	7.7	7	7.1	4	3.4	2.3		2.4	1.6	3.0		4.4	
1935	4.2	7.1	10	4.4	2	2.6	2.0	3	1.4	2.3	2.0		3.4	
1936	4.0	6.6	6	5.2	2	2.3	1.8		1.7	2.0	1.2		2.5	
1937	4.6	5.7	1	4.7	5	1.6	2.2		2.2	1.6	.1		2.0	
1938	3.4	5.1	12	4.4	8	1.6	1.4	4	2.0	2.4	.9		1.6	
1939	3.1	4.8	10	3.8	3	1.6	1.8		1.4	1.2	2.8		2.1	
1940	3.0	4.6	2	3.3		1.2	1.3	1	1.3	1.4	2.2		1.0	
1941	3.2	4.2	4	3.1	1	1.7	1.3	1	1.4	2.3	1.0		2.1	
1942	3.2	4.6	2	3.2	1	1.7	1.2		1.6	1.4	.9		1.8	
1943	3.3	4.4	5	2.8		1.2	1.0		1.1	.6	1.4		2.4	
1944	3.3	3.9	2	2.8		1.4	1.7	1	.9	.9	1.6		1.3	
1945	3.7	4.9	7	4.0	1	1.9	1.6	1	1.6	1.0	2.0		1.2	1
1946	3.2	5.2	2	3.9	1	1.6	1.8	2	.9	1.5	1.1		2.1	
1947	3.8	4.9	5	3.8		1.2	1.9		1.4	.4	1.0	1	2.2	
1948	3.4	4.5	7	4.2		1.9	1.4		.9	.9	2.0		2.5	1
1949	3.5	4.4	15	3.2	3	1.1	.9	1	1.3	.7	2.3		1.8	
1950	3.9	4.1	4	3.6	1	1.2	1.3		1.1	.5	1.1		2.9	
1951	3.7	3.8	4	3.9	1	1.3	1.5		1.1	.5	.9		1.0	
1952	3.3	4.0	4	3.8		1.3	1.5	1	1.6	.8	2.3		1.6	1
1953	4.6	3.6	4	4.0		1.5	1.1		1.2	1.1	1.1		2.0	
1954	3.3	3.4	4	3.2		1.0	1.0		1.1	.5	1.5		2.3	
1955	3.3	3.1		3.1		1.1	1.2		1.1	.8	1.8		1.3	

* Michigan, Minnesota, Wisconsin, and North Dakota have no death penalty for ordinary murder.

** Iowa, North Dakota and South Dakota were not admitted to the national death registration area until 1923, 1924, and 1930 respectively.

*** South Dakota introduced the death penalty in 1939.

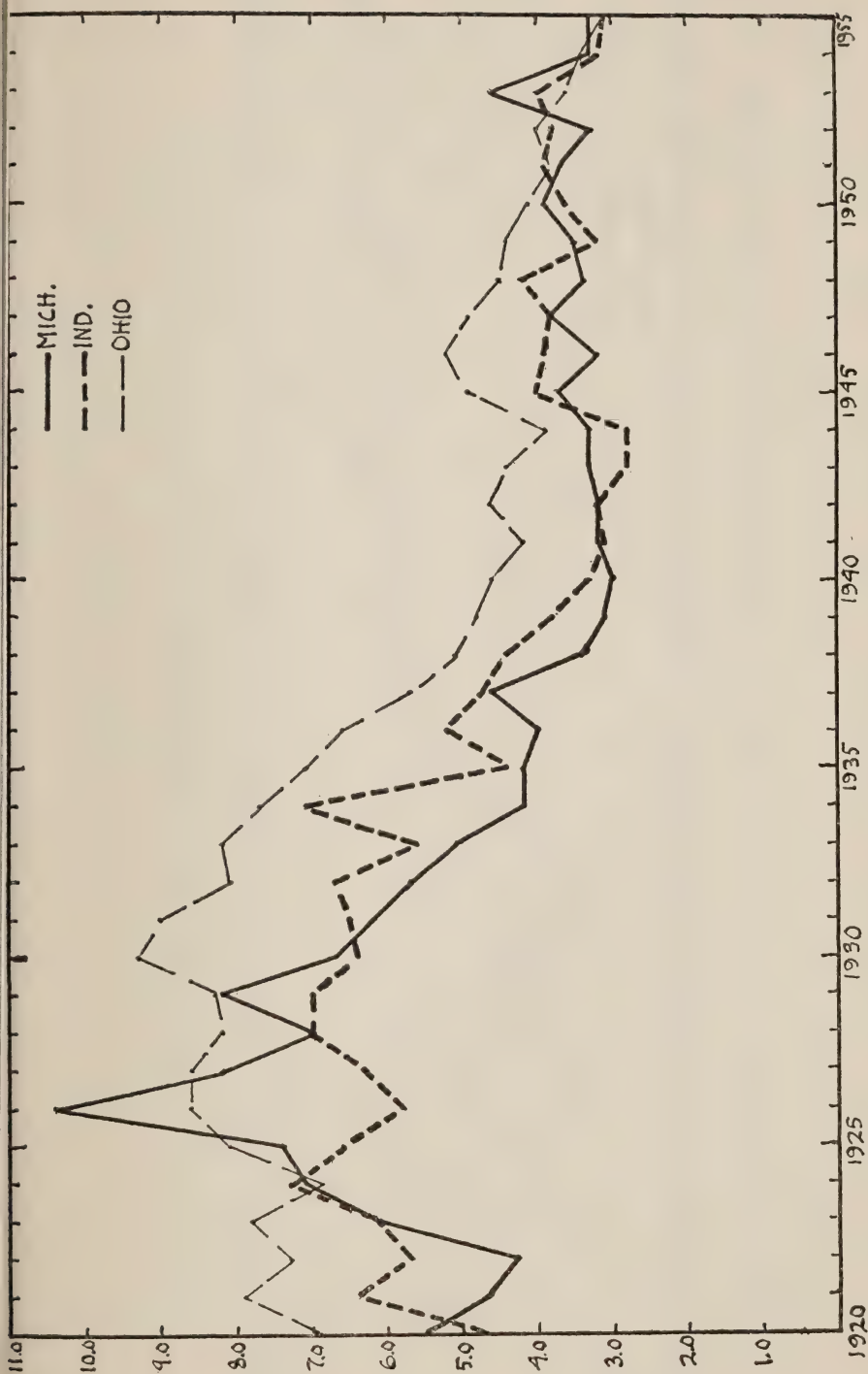


Diagram III. Crude Homicide Death Rates, per 100,000 population, in Michigan, Indiana, and Ohio: 1920-1955.

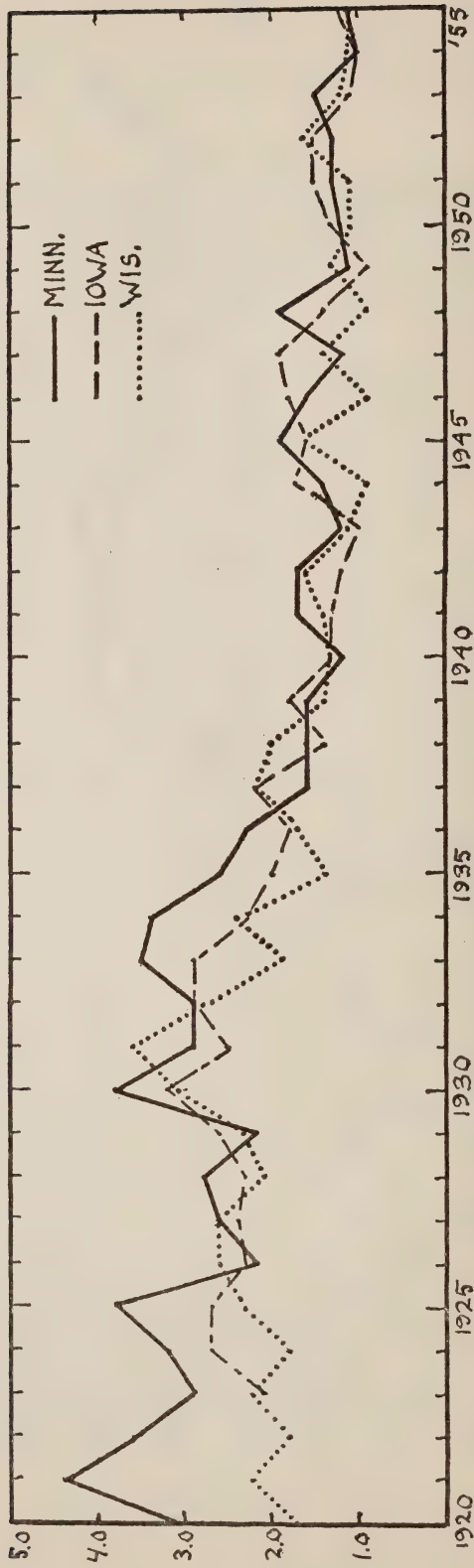


Diagram IV. Crude Homicide Death Rates, per 100,000 population, in Minnesota, Iowa, and Wisconsin: 1920-1955.

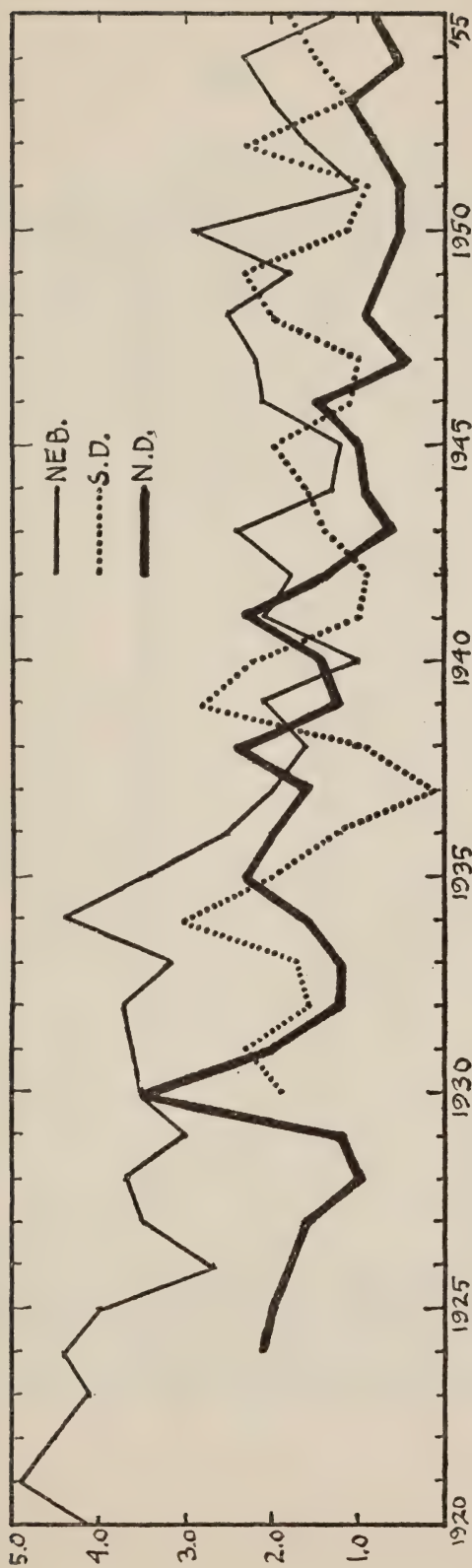


Diagram V. Crude Homicide Death Rates, per 100,000 population, in Nebraska, South Dakota, and North Dakota: 1920-1955.

TABLE 8

CRUDE HOMICIDE DEATH RATES AND NUMBER OF EXECUTIONS IN CERTAIN
AMERICAN STATES: 1920-1955

Year	Colorado		Kansas **		Missouri	
	Rate	Exec.	Rate	Exec.	Rate	Exec.
1920	9.2	1	4.7		7.8	*
1921	11.8		7.5		10.1	
1922	11.8	1	7.2		11.3	
1923	9.4		6.7		12.2	
1924	10.2	1	5.4		13.0	
1925	8.5		5.1		12.2	
1926	7.0	2	5.6		11.4	
1927	5.8		4.4		10.5	
1928	6.0	2	5.5		11.1	
1929	8.7		6.2		9.7	
1930	8.5	7	5.9		11.2	5
1931	8.3	4	6.9		10.9	
1932	8.1	2	6.7		10.9	3
1933	7.7	2	6.6		11.8	6
1934	7.3	1	6.1		11.5	2
1935	6.0	3	4.8		9.6	5
1936	7.7	1	4.3		8.2	1
1937	6.0	1	4.0		7.3	4
1938	5.3		4.0		6.1	8
1939	4.1	4	3.3		6.2	2
1940	4.6		2.2		5.4	2
1941	2.3	2	3.5		5.1	1
1942	3.6	2	3.1		5.6	1
1943	4.6	2	2.8	1	5.0	
1944	3.4		3.3	3	4.1	2
1945	4.6	3	2.3		5.9	2
1946	5.4		2.8		7.5	2
1947	4.6	2	3.5	2	5.9	3
1948	4.8		3.3		6.2	
1949	5.0	2	2.5		5.7	2
1950	3.3		3.4	1	5.9	1
1951	2.5	1	2.5	1	5.0	1
1952	3.1		3.1	1	6.2	1
1953	4.6		2.5		5.5	2
1954	3.3		3.1	2	5.3	
1955	4.2		2.5		5.3	1

* Missouri execution figures not available prior to 1930, when the Bureau of the Census began collecting national execution statistics based on death certificates. Missouri executions took place in local counties until 1937.

** Kansas introduced the death penalty in 1935.

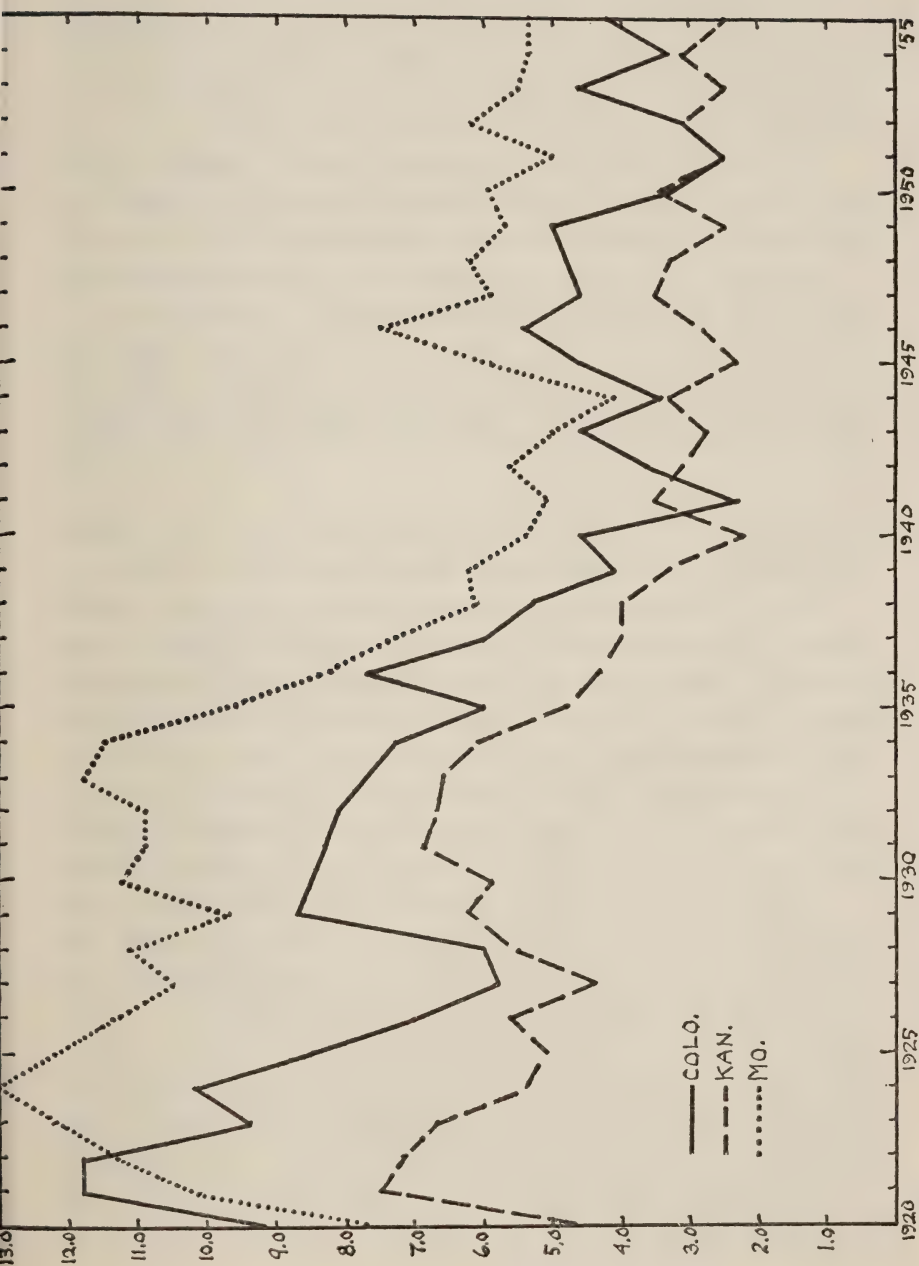


Diagram VI. Crude Homicide Death Rates, per 100,000 population, in Colorado, Kansas, and Missouri: 1920-1955.

The data examined reveal that

1. The *level* of the homicide death rates varies in different groups of states. It is lowest in the New England areas and in the northern states of the middle west and lies somewhat higher in Michigan, Indiana and Ohio.

2. Within each group of states having similar social and economic conditions and populations, it is impossible to distinguish the abolition state from the others.

3. The *trends* of the homicide death rates of comparable states with or without the death penalty are similar.

The inevitable conclusion is that executions have no discernible effect on homicide death rates which, as we have seen, are regarded as adequate indicators of capital murder rates.

The Effect of the Abolition or Introduction of the Death Penalty on Homicide Death Rates in American States.

Since a few American states have abolished the death penalty either permanently or temporarily it would be important to know what effect the policy has had on homicide rates. Most of the states that removed the death penalty for murder permanently did so, however, many years ago, (Michigan in 1846, Rhode Island in 1852, Wisconsin in 1853, and Maine in 1887) long before adequate mortality statistics were compiled. Some information about these states, is nevertheless available. In Michigan, the number of prisoners received in the state prison after conviction for murder in the first degree totaled 30 during 1847-1858 or an average of 2.5 per year, and 21 during 1859-1867, or an annual average of 2.3.⁸ During the seventeen years, 1852-1868, a total of 16 prisoners were received in the Rhode Island state prison on life sentences for murder, or an average of one per year.⁹ During the six years, 1854-1859, fol-

(8) Marvin H. Bovee, *Reasons for Abolishing Capital Punishment* (328 pp. Chicago, 1878), pp. 256, 260.

(9) *Ibid.*, p. 235.

lowing the repeal of the death penalty in Wisconsin, 20 prisoners arrived in the state prison after convictions for murder, or an annual average of 3.3; during 1860-1867, 21 were received, an average annually of 2.6.¹⁰ Bovee cites these declines as evidence of the beneficial effect of abolition but fails to take into account the transfer of some of the male population into the armed services.

Maine abolished the death penalty in 1876, re-introduced it in 1882 and abandoned it again in 1887. Some statistical data are available for the period 1862-1901.^{10a} The source of the data before 1877 is not given, but figures for later years have been drawn from the reports of the attorney general of Maine. In the following table, the years when the state had the death penalty have been bracketed.

	<i>Average annual number of</i>	
	<i>Homicides</i>	<i>Murder convictions</i>
[1862-66]	17.8	1.8
[1867-71]	11.2	3.4
[1873-76]	11.6	1.4
	<i>Prosecutions for homicide</i>	<i>Sentences for homicide</i>
1877-81	8.0	4.2
[1882-86]	6.8	5.8
1889-91*	6.0	3.8
1892-96	8.0	4.8
1897-1901	6.4	3.4

* No report issued for 1887 and 1888.

The experience of states which temporarily abolished the death penalty should give us some idea of the effect of this policy.

(10) *Ibid.*, p. 266.

(10a) Ohio State Library, *Monthly Bulletin* I, pp. 7-8, Jan. 1906.

Arizona had no such punishment between December 8, 1916 and December 5, 1918. The Governor reported that 41 murderers were convicted during the two years prior to abolition, 46 during the abolition period, and 45 during the following two years.¹¹

Colorado abolished the death penalty on March 29, 1897 and re-introduced it in 1901. The annual average number of convictions for murder was 16.3 during 1891-1896, 18 during 1897-1900, and 19 during 1901-1905.¹² In a report to the International Prison Commission, Mr. C. L. Stonaker, Secretary of the State Board of Charities and Corrections, wrote: "Capital punishment has been abolished in this state without any apparent increase in number of murders committed, but with a better showing for speedy trials and convictions. Since the establishment of the law abolishing capital punishment fifty per cent of murder trials have resulted in convictions."¹³

Iowa abolished the death penalty in 1872 and restored it in 1878. The annual average number of convictions for murder during the seven years prior to abolition was 2.6; during abolition, 8.8, and during the next seven years, 13.1.¹⁴

Missouri voted to abandon the death penalty on April 13, 1917 but restored it at a special session in July, 1919.¹⁵ The homicide death rates during the five years prior to abolition rose from 7.8 in 1912 to 10.0 in 1916. The rates for 1917-1919 were 12.3, 10.1 and 9.7, respectively, followed by rates of 7.9, 10.1, 11.4, 12.3 and 13.2 during the next five years.

(11) *Report from the Select Committee on Capital Punishment* (London, His Majesty's Stationery Office, 1931), p. 552.

(12) M. Liepmann, *Die Todesstrafe* (220 pp. Berlin, 1912), p. 69, citing Ohio State Library, *Monthly Bulletin* I, No. 10, p. 14.

(13) S. J. Barrows, *Prison Systems of the United States*. Reports prepared for the International Prison Commission (59th Congress, 1st Session, House of Representatives, Document No. 566), 157 pp. Washington: Government Printing Office, 1900; p. 40.

(14) Liepmann, op. cit., p. 69.

(15) Ellen Elizabeth Guillot, "Abolition and Restoration of the Death Penalty in Missouri." *The Annals of the American Academy of Political and Social Science*, 284:105-109, Nov., 1952.

Tennessee abolished the death penalty in 1915 for murder and restored it in 1919. Homicide death rates are available only since 1918. These rates were, for the white and the colored population separately:

<i>Year</i>	<i>Whites</i>	<i>Colored</i>
1918	6.9	29.2
1919	8.8	41.3
1920	7.0	42.4
1921	11.4	39.5
1922	10.7	45.9
1923	10.5	49.8
1924	10.8	52.5

Oregon had no death penalty during 1915-1920. It is reported that 59 murderers were received in the state prison during 1910-1914 and 36 during the five years of abolition.¹⁶ The homicide death rate of 1918, the first annual rate available, was 4.0 and in 1919 and 1920, it was 4.9 and 4.1, respectively. The 1921 rate rose to 7.7, followed during the next five years by rates of 5.9, 3.9, 3.5, 4.1 and 4.3.

Washington abolished the death penalty on March 22, 1913, and restored it on March 14, 1919. From 1902 to 1951, the rates of first degree murder convictions in the state, per 100,000 estimated population at the mid-decade, were:

1902-1911	3.56
1912-1921	5.57
1922-1931	5.99
1932-1941	6.66
1942-1951	2.58 ¹⁷

The annual homicide death rate averaged 6.5 during 1908-1912. In 1913 it was 6.5 but it rose in 1914 to 10.0

(16) *Report from the Select Committee on Capital Punishment*, p. 552.

(17) Norman S. Hayner and John R. Cranor, "The Death Penalty in Washington." *The Annals*, 284:101-4, Nov., 1952, p. 102.

and then gradually fell to 8.9, 5.5, 5.5, and 4.2 (1918). The year the death penalty was again introduced the rate rose to 7.5, but during the next five years, 1920-1924, it was 5.1, 5.9, 5.2, 4.7 and 6.2. The average annual rate was 6.8 during the period of abolition, and 5.8 during the first six years after the re-introduction of the death penalty.

Kansas and *South Dakota* went back to the death penalty in 1935 and 1939, respectively. In *Kansas* the annual average homicide death rate dropped from 6.5 during the five years prior to 1935 to 3.8 during the next five years. In *South Dakota* the rate for the corresponding periods before and after 1939 remained the same, 1.4.

The abolition of the death penalty in *Delaware* in April, 1958, has not been followed by an increase in murders. In the city of *Wilmington* which contains more than a third of the state's population, there were 10 murders known to the police during 1957, one in March, 1958 and none since then to the middle of November, 1958.¹⁸

The Experience Abroad

In the following pages some data will be presented that illustrate what happened to crime rates in some foreign countries which either tried abolition for a period or permanently abolished the death penalty.

Around 1930 a series of articles appeared in the German "Monthly Journal of Criminal Psychology and Criminal Law Reform". They dealt specifically with the death penalty in various German states and in *Austria*. They are of interest in this connection both because they are based on superior statistical data and because they attack some aspects of the effects of the death penalty which are sometimes ignored.

One of these articles dealt with murder and the death penalty in *Saxony*, 1855-1927.¹⁹ The author had at his dis-

(18) Data supplied by Sergeant Donald J. McDonald, Commander of the Records Division, Bureau of Police, *Wilmington*.

(19) Franz Exner, "Mord und Todesstrafe in *Sachsen*, 1855-1927". *Monatsschrift für Kriminalpsychologie und Strafrechtsreform*, 20:1-17, 1929.

posals the name, sex, civil status, age, year of crime, year of sentence and motive of every person sentenced to death and information as to whether the sentence was executed or commuted. Much of this material was presented in a detailed tabulation with data for each year in the series. The following table has been constructed by the use of some of this information.

TABLE 9

SENTENCES FOR MURDER AND EXECUTIONS IN SAXONY, 1855-1927

Years	Annual average of sentences	Rate per million population 18 years and over	Annual average of executions
1855-58*	2.75	8.7	1.0
1859-63	2.6	9.8	.6
1864-68	3.0	10.4	.2
1869-73	1.2	4.0	0
1874-78	2.8	8.6	0
1879-83	4.6	13.2	1.2
1884-88	3.6	9.6	1.4
1889-93	3.2	7.8	1.6
1894-98	2.4	5.3	1.0
1899-1903	1.4	2.8	.6
1904-08	2.2	4.1	1.2
1909-13	2.6	4.4	.8
1914-18	3.2	?	1.4
1919-23	5.2	8.2?	0
1924-27*	3.5	4.0?	0

* 4-year periods

Professor Exner subjected his data to an exhaustive analysis. He asked himself two questions:

(1) Can an immediate unfavorable effect of the abolition of the death penalty in *practice* or can an immediately favorable effect of its reintroduction be seen from statistics?

To secure an answer to this question he compared the number of sentences for murder in 1876-80, a period without executions (there had in fact been no executions since 1864),

with the corresponding number for 1882-86, when there was an annual average of 1.8 executions. He found 18 sentences during the former and 21 during the latter period. He also compared two five-year periods preceding periods of general pardons with two five-year periods immediately following (omitting the war years 1914-18 as abnormal) and arrived at the following results:

TABLE 10
EFFECT OF PARDON POLICY ON MURDER IN SAXONY

Periods before general pardon policy	No. of death sentences	Periods with general pardon policy	No. of death sentences
1860-1864	15	1866-1870	7
1909-1913	13	1920-1924	20
	—		—
	28		27

The author concluded that the abolition or reintroduction of the use of the death penalty had no immediate effects. We might mention that the death penalty was abolished in Saxony 1st October, 1868, but came into force again on 1st January, 1871, when the criminal code of the North German Union took effect. During the years 1868, 1869 and 1870 there were no sentences imposed for murder in Saxony. In 1864-67, there were 15 sentences and in 1871-75 there were 11.

The second question Professor Exner asked himself was:

(2) Can favorable or unfavorable effects be discerned only after some time?

In order to secure an answer, he compared the last eight years (1873-80) of a 16-year period when all death sentences were commuted with the eight years (1857-64) just before this general pardon policy was begun, and found that the rate of sentences for murder was 15.3 per million

population, 18 years of age and over, in 1857-64 and 13.8 in 1873-80. In other words, the reply to the question was no.

Finally, Professor Exner compared the 25 years without executions (1865-1880 and 1919-1927) with 25 years with executions (1881-1896 and 1910-1918) and found that each period showed 80 sentences for murder.

A second article, dealing with the death penalty in Württemberg between 1840 and 1860 is of special interest because the death penalty was abolished during the period 1849-53. This investigation, based on an inspection of the records in the Württemberg Ministry of Justice, showed a considerable rise in convictions for murder during the abolition years, as may be seen from the following table.²⁰

TABLE 11
MURDER IN WÜRTTEMBERG, 1844-1858

5-year periods	Convicted of murder	Convicted of manslaughter	Convicted of infanticide
1844-1848	14	2	10
1849-1853	38	12	21
1854-1858	26	5	23

The author explained the rise as being largely due to the armed revolts which the revolution of 1848 brought in its train. They occurred in various parts of the province in 1848 and 1849 and had to be put down by the soldiery. During the Schlager Ministry the crimes associated with these revolts were not prosecuted but under the Linder Ministry, which reintroduced the death penalty, they were prosecuted, from the second half of 1851 on. Furthermore, the author noted that prior to 1849 only completed murders were punished by death. Twelve of the convictions for murder in 1852 and 1853 involved attempts only and 6 of those in 1854.

A third article on murder and the death penalty in Hesse, 1817-1929, should be noted. This penalty was abo-

(20) Helmuth Fischinger, "Die Todesstrafe in Württemberg, 1840-1860". *Monatsschrift für Kriminalpsychologie und Strafrechtsreform*, 19:314-315, May, 1928.

lished in Hesse between 11th April, 1849, and 20th April, 1852. There were two murders in 1850, resulting in life sentences. There were 15 murders in 1839-48 and 17 in 1852-61, for which the offender was sentenced to death.²¹

Like Exner, the author wondered if pardon practices showed any immediate favourable or unfavourable effects. Unfortunately, some errors in his computations make it necessary to revise his figures, but by using his original data we find that if we compare the three 5-year periods (1844-48, 1861-65 and 1925-29) which began periods without executions with the three 5-year periods immediately preceding, each set of years had 21 sentences for murder. Executions began to take place again in 1852 and in 1880 after 9 and 20 years of interruption respectively. The two five-year periods before these dates showed a total of 11 sentences for murder and the two five-year periods following showed a total of 12.

Finally, we might mention a fourth study of murder criminality and the death penalty in Austria. The data in the following table are for the area covered by the Republic of 1919 and are therefore comparable.²²

TABLE 12
HOMICIDES IN AUSTRIA, 1874-1927

Years	Death sentences	Annual average number of death sentences	Rate per million population	Annual average number of executions
1874-79	93	15.5	3.5	1.0
1880-89	136	13.6	2.9	1.2
1890-99	131	13.1	2.9	.8
1900-09	97	9.7	1.6	.3
1910-13	57	16.2	2.5	—
1914-18	76	15.2	2.1	.2
1919-22	136	34.0	5.6	—
1923-27	102	20.4	3.1	—

(21) Karl Kramer, "Mord und Todesstrafe in Hessen, 1817-1929". *Monatsschrift für Kriminalpsychologie und Strafrechtsreform*, 23:129-76, 1932.

(22) E. Höpler, "Mordkriminalität und Todesstrafe in Österreich in den Jahren 1879 bis 1927". *Monatsschrift für Kriminalpsychologie und Strafrechtsreform*, 20:449-511, 1929.

The death penalty in the ordinary criminal procedure was abolished in Austria after the first World War. The author, an advocate of the death penalty, concluded that it was impossible to determine, on the basis of the data since 1918 if abolition had had any effect on the murder rate. To those familiar with the devastating social effects of the war, the rise in the murder rate in the following decade is quite understandable.

Austria abolished the death penalty in 1919, restored it in 1934 and abolished it again in 1950. Very recently, as a result of some murders that aroused great public feeling, there have been voices heard demanding a return to the former penalty. There are statistics, however, which show that the homicide rates of recent years have been comparatively low. The following data are pertinent:²³

TABLE 13
HOMICIDES KNOWN TO THE POLICE OF AUSTRIA, 1947-57

Year	Murder and Manslaughter	Attempted Murder	Total
1947	274	248	522
1948	227	162	389
1949	155	121	276
1950	101	110	211
1951	120	103	223
1952	83	84	167
1953	83	113	196
1954	91	93	184
1955	96	73	169
1956	120	86	206
1957	92	93	185

From the same source we learn that during 1947-1951, the annual average number of convictions of murder and manslaughter was 90.0, and that the corresponding figure from 1952-1956 was 68.4.

The death penalty was abolished in *Baden* between 16th March, 1849, and 5th February, 1851. The following table shows convictions for murder during the period 1840-1871.

(23) Roland Grassberger, "Der Ruf nach der Todesstrafe." *Juristische Blätter*, 80:429-36, Sept. 13, 1958.

The two convictions in 1849 were for murders committed before that year and the 1851 case involved a crime committed after the death penalty had been again introduced.²⁴

TABLE 14
MURDER IN BADEN, 1840-1871

Year	Convictions of murder	Year	Convictions of murder
1840	2	1856	4
1841	7	1857	—
1842	2	1858	—
1843	1	1859	2
1844	2	1860	4
1845	—	1861	3
1846	1	1862	—
1847	—	1863	3
1848	5	1864	1
1849	2	1865	1
1850	—	1866	—
1851	1	1867	3
1852	1	1868	2
1853	3	1869	3
1854	3	1870	2
1855	3	1871	3

Bremen and *Anhalt* abolished the death penalty in 1851 and 1853 respectively and did not restore it until 31st May, 1870, when the North German Union's penal code took effect. The following table shows convictions for murder and manslaughter in Bremen and for murder and attempted murder in Anhalt, 1840-1870.²⁵

TABLE 15
HOMICIDE IN BREMEN AND ANHALT, 1840-1870

Year	Bremen	Anhalt	Year	Bremen	Anhalt
1840	1	—	1856	—	2
1841	—	—	1857	1	—
1842	—	1	1858	—	—
1843	—	—	1859	—	—
1844	—	1	1860	—	3
1845	6	—	1861	—	2
1846	—	—	1862	—	—
1847	1	—	1863	—	1
1848	5	—	1864	—	1
1849	—	—	1865	—	1
1850	2	—	1866	1	—
1851	9	1	1867	—	—
1852	5	—	1868	1	2
1853	—	3	1869	—	—
1854	—	—	1870	1	1
1855	—	—			

(24) Liepmann, op. cit. p. 80. See footnote 12.

(25) Liepmann, op. cit., p. 87.

Netherlands

The death penalty was abolished in the Netherlands 17th September, 1870. The best statistical investigation of the deterrent effect of this punishment was made in 1896 by C. Loosjes²⁶ and covers the period of 1850-90. During the first of these decades the death penalty was used; during the second it was not practised and during the last two it was not a legal punishment. Leaving the year 1870 out of consideration (there were no convictions for murder that year, according to Liepmann), the following table was developed by Loosjes. Only a part of it has been reproduced here. The author also included arson convictions in his original study. Arson resulting in someone's death was a capital crime prior to 1870. In 1854 the death penalty had been abolished for arson that caused death "when it could not be foreseen that death might result." As the years went by, however, the statistics of arson evidently came to include a variety of kinds and are therefore not usable for our purposes.

TABLE 16

CONVICTIONS OF CAPITAL OR EX-CAPITAL CRIMES IN THE NETHERLANDS, 1860-1890

Crimes	1860	1861	1862	1863	1864	1865	1866	1867	1868	1869
Murder	1	1	2	5	—	4	—	2	4	2
Attempted Murder	1	3	2	1	3	1	2	2	2	1
Poisoning	1	—	4	1	2	—	1	1	2	—
Parricide	—	—	—	—	—	1	—	—	1	—
Total	3	4	8	7	5	6	3	5	9	3
Crimes	1871	1872	1873	1874	1875	1876	1877	1878	1879	1880
Murder	5	7	1	—	—	1	—	2	5	4
Attempted Murder	—	—	—	—	1	1	2	1	—	1
Poisoning	—	—	—	—	—	—	2	—	—	—
Parricide	—	—	—	—	—	—	—	—	—	—
Total	5	7	1	—	1	2	4	3	5	5
Crimes	1881	1882	1883	1884	1885	1886	1887	1888	1889	1890
Murder	2	—	2	2	1	2	4	5	6	9
Attempted Murder	3	4	2	2	1	4	—	—	—	—
Poisoning	—	—	2	1	1	—	—	—	—	—
Parricide	—	—	—	—	—	—	—	—	—	—
Total	5	4	6	5	3	6	4	5	6	9

(26) "Gegevens omtrent de afschrikkende kracht der doodstraf" *Tijds. voor Strafr.*, 9:121-171, 1896.

A summary of this table with data added for the 1850-59 decade follows:

Crimes	1850-1859	1860-1869	1871-1880	1881-1890
Murder	23	21	25	33
Attempted Murder	2	18	6	16
Poisoning	5	12	2	4
Parricide	2	2	—	—
Total	32	53	33	53
Annual Average	3.2	5.3	3.3	5.3

By manipulating the official data reported in 1930 by the British Legation at The Hague we find that the decade of 1891-1900 showed an annual average of 6.6 convictions for murder or attempted murder,²⁷ the 1901-10 decade an annual average of 6.1 and the 1911-20 decade, 8.4, and the years 1921-27, 4.5.

The annual average rates of convictions per million inhabitants were:

1850-1859	.96
1860-1869	1.46
1871-1880	.83
1881-1890	1.17
1891-1900	1.41
1901-1910	1.25
1911-1920	1.32
1921-1927	.60

Sweden

The death penalty was abolished in Sweden in 1921, but the last execution occurred in 1910, preceded by 3 in 1900, 1 in 1893 and 1 in 1890, 1 in 1887, 2 in 1882 and 1 in 1879. During the preceding period, 1869-78, there were 3 executions.

(27) The data are reported in the *Report from the Select Committee on Capital Punishment*, London, 1931, p. 602. While they purport to deal with "murder" alone, attempted murder is evidently included, there being a check available with corresponding figures reported by Prof. J. Simon van der Aa in the same report, p. 609. Neither of these sources have included "poisoning", however, which accounts for the fact that the figures reported by Loosjes are higher for the 1860-1890 period than those reported by Prof. Simon van der Aa.

The annual average homicide death rates of Sweden (exclusive of infanticide and unintentional manslaughter) from 1754 to 1942 are given in the following table, per 100,000 inhabitants, probably the longest reliable statistical series of its kind in the world.²⁸

TABLE 17
HOMICIDE DEATH RATES, SWEDEN, 1754-1942

1754-1763	.83
1775-1792	.66
1793-1806	.61
1809-1830	1.09*
1831-1845	1.47
1846-1860	1.24
1861-1877	1.12
1878-1898	.90
1899-1904	.96
1905-1913	.86
1914-1916	.72
1920-1932	.52
1933-1938	.46
1939-1942	.47

* Exclusive of 1814 and 1818.

The following table shows the number of persons convicted by courts of first instance for murder, 1913-47.²⁹

TABLE 18
MURDER CONVICTIONS, SWEDEN, 1913-1947

Year	Convictions	Year	Convictions
1913	8	1930	5
1914	5	1931	4
1915	4	1932	9
1916	3	1933	6
1917	3	1934	7
1918	6	1935	3
1919	8	1936	5
1920	12	1937	10
1921	7	1938	6
1922	7	1939	2
1923	9	1940	1
1924	4	1941	4
1925	4	1942	4
1926	6	1943	11
1927	3	1944	4
1928	3	1945	4
1929	8	1946	5
		1947	5

(28) Veli Verkko: "Treårskrigets och vapenstilleståndets verkningar på brottsligheten i Finland". *De Nordiska Kriminalistföreningarnas Årsbok* 1944-1945 (416 pp. Stockholm: Haggström, 1947), pp. 357-372; p. 358.

(29) Royal Commission on Capital Punishment, *Memoranda and Replies to a Questionnaire* . . . III. *Europe* (London: Her Majesty's Stationery Office, 1953), p. 854.

By adding these into five-year periods we get the following results:

1913-1917	23
1918-1922	40
1923-1927	26
1928-1932	29
1933-1937	31
1938-1942	17
1943-1947	29

Considering the growth in population during the 35 years covered by these statistics, the actual downward trend is more pronounced than the tables indicate. It is obvious that the abolition of the death penalty has had no visible effect on the homicide or murder rates of Sweden.

Queensland

Queensland had its last execution in 1911 and abolished capital punishment in 1922. The following table is instructive: ³⁰

TABLE 19
MURDERS KNOWN AND CONVICTIONS, QUEENSLAND, 1902-1949

Year	Total No. of Murders	Total		Population at end of Period
	Known to Police	Murder	Mansl.	
1902-1911	142	38	39	623,123
1912-1921	131	25	29	765,624
1922-1931	135	28	30	929,726
1932-1941	144	28	21	1,038,206
1942-1949	140	33	20	c. 1,120,000

During 1902-11, the average annual rate of murders known to the police was 2.6. The next decade, following the last execution, showed a corresponding rate of 1.9. After the abolition of the death penalty it fell to 1.6 where it remained with unimportant variations from year to year through 1949.

(30) Based on Appendix A, p. 693, of Royal Commission on Capital Punishment, *Memoranda and Replies to a Questionnaire . . . I. Commonwealth Countries* (London: Her Majesty's Stationery Office, 1951).

New Zealand

New Zealand abolished the death penalty for murder in 1941 and re-established it in 1950. During the 1930's, the rate of murders known to the police had risen from .5 to .3 in the year just before abolition. The rate rose during the 1940's to 1.2 in 1944 and 1945 after which it fell again to .7 in 1948.³¹

England

As is well known, the last decade has seen the growth of a strong movement to abolish the death penalty in England. In 1956, the House of Commons actually passed an act to that effect, which was defeated in the House of Lords. The Government countered by introducing a bill which led to the passage in March, 1957, of a new Homicide Act, which, in fact, adopted the principle, if not the terminology, of American legislation that defines murders in the first degree by separating murders into two categories, capital murders and other murders, the latter punishable by imprisonment for life. The Act has been strongly criticized by the abolitionists, of course, but also by those who feel that the law now has lost much of its deterrent power by omitting, for instance, murder in connection with a sex offense or by poison from the capital murder category, not to mention that the felony murder now made punishable by death has been greatly circumscribed by definition.

The month following the enactment of the act showed a considerable increase in murders known to the police of England and the experience of subsequent months appeared to the defenders of the old system as justifying their fears. Since then, however, an improvement appears to have occurred, as is seen by the following table:³²

(31) *Ibid.*, p. 722.

(32) Provided by Sir Ernest Gowers, with the aid of the Home Office, and supplied to the writer by Mr. Herbert Cobin, president of the Prisoners' Aid Society of Delaware.

TABLE 20

NUMBER OF MURDERS KNOWN TO THE POLICE IN ENGLAND AND WALES,
INCLUDING CASES SUBSEQUENTLY FOUND NOT TO BE MURDERS

Year	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Total
1950	12	17	17	12	11	19	15	21	12	5	8	16	165
1951	17	9	11	11	9	10	20	13	9	10	19	19	157
1952	10	10	19	19	13	20	18	13	11	14	17	16	180
1953	19	22	17	13	12	18	14	9	15	12	11	12	174
1954	9	12	19	15	20	13	3	7	22	14	19	13	166
1955	8	19	22	15	15	7	12	13	14	6	13	8	152
1956	10	13	17	12	16	15	15	11	13	24	14	19	179
1957	13	13	21*	27	21	34	15	20	11	18	13	17	223
1958	11	15	18	15	17	16	21						

* Including 11 recorded as crimes known, prior to March 21st; in addition there was one case of manslaughter, which would previously have been murder.

A Case Study of Deterrence

The data so far examined have involved entire countries or states. More restricted studies have been lacking. One such study should be mentioned, however, because it attempts to discover the effect of executions on conduct in a single locality, Philadelphia.³³

If the death penalty is a deterrent, its greatest effect should be shown through executions which are well publicised. Furthermore, the effect should be most noticeable in the community where the offense occurred, where the trial aroused wide publicity and the offender lived and had relatives, friends and acquaintances.

The dates of the executions of Philadelphia residents were secured for a period of several years. Because it was necessary to have cases which not only met the conditions mentioned above but also occurred as somewhat isolated events, numerous cases had to be eliminated. There remained, finally, five cases which met the specifications and which stood sufficiently alone to provide 60-day free periods before and after the date of execution, i.e., periods free from any other execution of local interest, although it was impossible to find such periods during which there were no executions in the entire state.

(33) Committee on Philanthropic Labor of Philadelphia Yearly Meeting of Friends. Friends' Social Service Series, Bulletin No. 29, Third Month, 1935. *The Deterrent Effect of Capital Punishment*. Prepared by Robert H. Dann, 20 pp.

Three of the five cases were of great notoriety. In one case, a bank robbery, four men were executed in succession and one local newspaper gave its entire front page to the event.

The choice of cases having been made (from 1927, 1929, 1930, 1931 and 1932), all homicide deaths listed in the records of the Coroner during the 60 days before and after each case were studied. Accidental, justifiable and excusable homicides were eliminated, as well as deaths due to abortion. The remaining cases were examined to ascertain the date when they occurred; they were also checked with the prosecutor's office. The purpose was to retain only those cases which might represent homicides punishable as crime, whether the offender was unknown, committed suicide or was dealt with by the courts.

The dates of the homicides were then marked on a calendar and analysed statistically. On the assumption that deterrence should manifest itself by a decline or at least a temporary drop in homicides, various tables were prepared. It was found, for instance, that if the five 120-day periods were combined there were a total of 105 days *free from homicides* during the 60-day periods before the executions and 74 in the periods after the executions. There were a total of 91 homicides in the "before execution" periods and 113 in the "after" periods.

The number of days free from homicides in the 10-day periods before and after the executions was:

Days	Before	After
1-10	9	16
11-20	24	15
21-30	11	27
31-40	17	9
41-50	17	0
51-60	27	7
	105	74

Of the 204 homicides included in the study, 19 resulted in sentences for murder in the first degree. Nine of them had occurred during the 60-day periods preceding and 10 in the corresponding periods following the executions. During the ten days just before the executions there were two and during the ten days immediately following there were three such first degree murders in Philadelphia.^{33a}

Police Safety

Police officials, at least in jurisdictions that have the death penalty, usually oppose any move to secure its abolition, because it is their strong belief that the threat of possible execution deters criminals from carrying lethal weapons or from using them against the police when they are in danger of being arrested. These beliefs were voiced time and again by witnesses appearing before the Royal Commission on Capital Punishment in 1950, and in 1954 the president of the Chief Constables Association of Canada made the following statement before the Joint Committee of the Senate and the House of Commons on Capital Punishment: "Our main objection is that abolition would adversely affect the personal safety of police officers in the daily discharge of their duties. It would be interesting to know, and if time had permitted I would have tried to obtain this vital information as to the number of policemen murdered in the execution of their duty in those parts of the world where capital punishment has been abolished. I submit that it will be found the number is much higher than in those countries where the death penalty is still in effect, and this point is the main one in our submission that our government should retain capital punishment as a form of security."

(33a) See also Leonard D. Savitz, "A Study in Capital Punishment." *Jour. of Crim. Law, Criminology and Police Sci.*, 49:338-41, Nov.-Dec. 1958. The study of Mr. Savitz is similar to that of Mr. Dann, but is based on four separate murder trials and sentences to death. He found no deterrent effect of these sentences on the murder rate during the subsequent weeks.

No attempt to verify the claim by the police had been made, when the above quoted statement was made. As a matter of fact, the often great cultural differences of the countries of the world that have retained or abolished the death penalty would make a comparative study such as that implied in the quotation above rather difficult. Indeed, nowhere would conditions be as ideal for such a study as in the United States, where death penalty states and abolition states of quite similar traditions, populations, and culture can be found bordering on one another. The author of this report, therefore, decided to test the claims of the police that the death penalty makes the lives of policemen safer.

There are great obstacles in the way of making a conclusive study of this problem. From a theoretical point of view what one would like to know is first of all whether a larger proportion of criminals actually *carry* lethal weapons in abolition states. This is probably impossible to discover with any degree of accuracy. Failing this, one would like to know if criminals in these states *use* such weapons in encounters with the police more frequently than in the death penalty states, whether or not a wounding or killing of a policeman occurs. In reading police reports one sometimes finds a notice that a policeman has been commended for bravery because after an exchange of shots, he succeeded in wounding the criminal or disarming him, although he himself was not injured. To secure reliable statistics of such attacks would, however, be virtually impossible. One is, therefore, compelled to seek data on the number of police killed or wounded. There is an a priori likelihood that records of such occurrences are kept in police departments. Although in discussions of the relationship of the death penalty to police safety references are generally made only to policemen killed, it is obvious that woundings are equally important, for every wounding can be regarded as a killing that was avoided merely by chance, because the bullet or

the knife failed to strike a vital spot, or medical aid was so promptly given than an otherwise possible death did not occur.

In brief, one should have data on the number of *attacks* on the police by criminals or suspects, whether the police are hurt or not, since the use of a lethal weapon (gun or knife) indicates a disregard for consequences and since such a weapon is potentially fatal. If such data cannot be secured, we should have data on *actual woundings and killings* resulting from such attacks or encounters. At the very least we should have data on *police killed by lethal weapons*.

Seventeen states were selected for the study. All the six states which have no death penalty and had abolished it before 1919 were included and eleven states bordering on the abolition states. Because of the great variations in the homicide rate in the United States, it was assumed that states from about the same culture areas would afford the best basis for comparison.

During the middle of December, 1954, a letter was mailed to police departments in the 593 cities with more than 10,000 population according to the Census of 1950 in Maine, Michigan, Minnesota, North Dakota, Rhode Island, and Wisconsin; and in Connecticut, Illinois, Indiana, Iowa, Massachusetts, Montana, New Hampshire, New York, Ohio, South Dakota, and Vermont. This letter requested information, year by year, beginning with 1919 and ending with 1954, on each case of a wounding or a killing of a member of the police department by a lethal weapon in the hands of a criminal or a suspect. A brief description of each incident was requested indicating, if possible, the nature of the offence involved. Furthermore, in each case information was asked about the kind of weapon used and whether or not the offender was insane.

Fifty-five per cent of the cities in the abolition and 41 per cent of those in the death penalty states returned usable schedules, 266 in all. No replies were received from

Detroit, Minneapolis, New York City, Cleveland or Boston. The largest cities represented were Chicago, Milwaukee, Cincinnati, and Buffalo. Because Chicago proved to have had more policemen killed than all the other cities combined, it has not been included in the tables that will be presented. The Chicago police supplied, however, the best report and the contents of that report will be separately analyzed.

The schedule asked for information both on woundings and on killings of police, in the belief that this would yield more probative results. However, an inspection of the schedules returned made it clear that the data on woundings were so incomplete that there was no possibility of using them. All the largest cities reporting (except Chicago) reported only the policemen killed; many others stated that figures on woundings were available only for the most recent years, etc. Hence, only the information on the killing of policemen could be utilized. However, this is the kind of information which always seems to be stressed in discussions of police safety.

It is unnecessary here to enter into a detailed discussion of the procedure utilized in the study.³⁴ The cities reporting were grouped by size and the rates of policemen killed were computed for each class separately in the two categories of states. The population of the cities involved, as given in the 1950 census, was used as a basis for the rates; after careful consideration of the theoretical defects of that base, it was concluded that it would offer as good a result as any other.

Table 21 contains the data secured. The rate of fatal attacks on police in 82 cities in the abolition states was 1.2 and in 182 cities in the death penalty states, 1.3, an insignificant difference.

(34) For the complete report on this study and a companion study of the safety of the state police, by Donald Campion, S.J., see Appendix "F" referred to *supra*, footnote 1, p. ix.

TABLE 21

CASES OF POLICE HOMICIDE, BY CITIES GROUPED ACCORDING TO SIZE; AND RATES PER 100,000 POPULATION IN EACH GROUP OF CITIES, BY STATE

A. Abolition States	10,000-30,000				30,000-60,000				60,000-100,000			
	No. Cit.	No. Cases	Popu-lation	Rate	No. Cit.	No. Cases	Popu-lation	Rate	No. Cit.	No. Cases	Popu-lation	Rate
Maine	4	...	54,280	0.0	1	...	31,558	0.0	1	...	77,634	0.0
Michigan	24	8	419,904	1.9	4	1	189,609	0.5	2	3	187,912	1.6
Minnesota ...	14	4	259,461	1.5								
North Dakota .	3	1	51,369	1.9								
Rhode Island .	3	...	46,084	0.0	3	1	116,463	0.9				
Wisconsin ...	13	2	207,940	0.9	7	4	252,580	1.6	1	3	96,056	3.1
Total	61	15	1,039,038	1.3	15	6	590,210	1.0	4	6	361,602	1.6
A. Abolition States	100,000-350,000				500,000-650,000				All Cities			
	No. Cit.	No. Cases	Popu-lation	Rate	No. Cit.	No. Cases	Popu-lation	Rate	No. Cit.	No. Cases	Popu-lation	Rate
Maine	...	...	...	...	...	...	...	...	6	...	163,472	0.0
Michigan	1	1	176,515	0.6	...	...	...	...	31	13	973,940	1.3
Minnesota ...	...	...	...	...	...	...	...	...	14	4	259,461	1.5
North Dakota .	...	...	...	...	...	...	...	...	3	1	51,369	1.9
Rhode Island .	...	...	...	...	...	...	...	...	6	1	162,547	0.6
Wisconsin ...	...	...	...	...	1	5	637,392	0.8	22	14	1,193,968	1.2
Total	1	1	176,515	0.6	1	5	637,392	0.8	82	33	2,804,757	1.2
B. Capital Punishment States	10,000-30,000				30,000-60,000				60,000-100,000			
	No. Cit.	No. Cases	Popu-lation	Rate	No. Cit.	No. Cases	Popu-lation	Rate	No. Cit.	No. Cases	Popu-lation	Rate
Connecticut ..	11	...	190,746	0.0	5	1	212,213	0.5	1	...	74,293	0.0
Illinois	14	4	206,214	1.9	6	1	225,701	0.4	1	1	92,927	1.1
Indiana	10	3	170,785	1.7	4	7	171,048	4.1				
Iowa	6	...	85,429	0.0	2	2	64,244	3.1	1	...	72,296	0.0
Massachusetts	31	6	499,841	1.2	5	1	221,877	0.4	1	1	66,112	1.5
Montana	1	1	17,581	5.7								
New Hampshire .	4	...	59,809	0.0	1	1	34,469	2.9	1	...	82,732	0.0
New York ...	24	3	426,631	0.7	7	...	290,304	0.0	2	4	171,546	2.3
Ohio	21	7	371,623	1.9	7	3	223,303	1.3	2	1	146,379	0.7
South Dakota .	2	...	24,920	0.0								
Vermont	1	...	12,411	0.0								
Total	125	24	2,065,990	1.2	37	16	1,443,159	1.1	9	7	706,285	1.0
B. Capital Punishment States	100,000-350,000				500,000-650,000				All Cities			
	No. Cit.	No. Cases	Popu-lation	Rate	No. Cit.	No. Cases	Popu-lation	Rate	No. Cit.	No. Cases	Popu-lation	Rate
Connecticut ..	2	3	263,186	1.1	...	...	...	...	19	4	740,438	0.5
Illinois	...	...	...	...	...	...	...	...	21	6	524,842	1.1
Indiana	1	1	133,607	0.7	...	...	...	...	15	11	475,440	2.3
Iowa	1	6	177,965	3.3	...	...	...	...	10	8	399,934	2.0
Massachusetts	1	...	203,486	0.0	...	...	...	...	38	8	991,316	0.8
Montana	...	...	...	...	...	...	...	...	1	1	17,581	5.7
New Hampshire .	...	...	...	...	...	...	...	...	6	1	177,010	0.5
New York ...	2	3	434,019	0.7	1	8	580,132	1.4	36	18	1,902,632	0.9
Ohio	3	14	635,389	2.2	1	13	503,998	2.6	34	38	1,880,692	2.2
South Dakota .	...	...	...	...	...	...	...	...	2	...	24,920	0.0
Vermont	...	...	...	...	...	...	...	...	1	...	12,411	0.0
Total	10	27	1,847,652	1.5	2	21	1,084,130	1.9	183	95	7,147,216	1.3

Taking the cities of the smallest class—those between 10,000 and 30,000 inhabitants—and using only rates from states with at least ten such cities reporting, the following comparative rates were found:

<i>Abolition States</i>		<i>Capital Punishment States</i>	
Michigan	1.9	Ohio	1.9
Minnesota	1.5	Illinois	1.9
Wisconsin	0.9	Indiana	1.7
		New York	0.7
		Connecticut	0.0
		Massachusetts	1.2

In the group of cities with populations between 30,000 and 60,000, the abolition cities had a total rate of 1.0 and the capital punishment cities 1.1, but there were considerable variations among the states ranging from a high of 4.1 in Indiana to a low of .4 for Massachusetts. In the third to fifth groups of cities the number reporting was, of course, small but it may be observed that compared with Milwaukee's (Wisconsin) rate of .8, the rates for Cincinnati, Ohio—2.6, and Buffalo, New York—1.4, were somewhat higher.

It is obvious from an inspection of the data that it is impossible to conclude that the states which had no death penalty had thereby made the policeman's lot more hazardous. It is also obvious that the same differences observable in the general homicide rates of the various states were reflected in the rate of police killings. This can be readily observed by comparing the middlewest states with and without the death penalty with corresponding states in the eastern part of the country, as was done in the following table, where the appropriate rates of police homicides are presented.

TABLE 22

RATES OF POLICE HOMICIDES IN SELECTED STATES

Eastern States			Middle West States			
		Capital			Capital	
Abolition States		Punishment States	Abolition States		Punishment States	
Maine	0.0	New Hampshire 0.5	N. Dakota ..	1.9	Iowa	2.0
Rhode Is. ..	0.6	Massachusetts . 0.8	Minnesota ..	1.5	Illinois	1.1
		Connecticut 0.5	Michigan ..	1.3	Indiana	2.3
		New York 0.9	Wisconsin ..	1.2	Ohio	2.2

Another interesting comparison was afforded by the data, namely the trend of the killings. The following table, in which the cases for the thirty-six year period have been grouped into six year periods, show clearly that the 1925-36 periods were the most hazardous and that the hazards greatly declined in later years.

TABLE 23

TRENDS IN CASES OF POLICE KILLINGS, 1919-54, AS REPORTED BY 266 CITIES IN SEVENTEEN STATES

Years	Cases		Police Killed		Both Combined	
	Abol. States	C. P. States	Abol. States	C. P. States	Cases	Police Killed
1919-1924	8	25 ⁸	12	25	33	37
1925-1930	8 ¹	31 ⁵	9	31	39	40
1931-1936	5 ¹	24 ¹	5	26	29	31
1937-1942	4	9	4	11	13	15
1943-1948	5 ²	5 ¹⁴	5	5	10	10
1949-1954	3	1	4	1	4	5
Total	33	95	39	99	128	138

¹ Excluding a case in which the killer was insane.

² Excluding a case in which officer was struck by flashlight.

³ Excluding three cases in which the killer was insane; excluding a case in which killer used gun as club.

⁴ Excluding a case in which officer was crushed by car operated by the killer.

⁵ Including three cases, in which killer seized the officer's gun and killed him.

In only two of the killings was a knife the weapon used; the others were committed by firearms, usually described merely as a gun, a pistol, or a revolver. In one

case, a rifle was used and in three cases a shotgun. A machine gun was used in a single instance—in connection with a bank robbery in Needham, Mass., in 1934, when two police officers were killed, one during the robbery and the other during his pursuit of the criminals.

It will be recalled that the letter which asked for data also requested that the reporter indicate whether or not he believed that the existence of the threat of possible execution gave the police a certain amount of protection which was lacking in the abolition states. Only 69 replies to this request were received from cities in capital punishment states and 27 replies from abolition states, i.e., 36.5 per cent of the responding cities in the capital punishment states and 31.7 per cent of the cities in the abolition states gave an opinion. In the death penalty states, the police officer reporting believed in the added protective force of the death penalty in 62 out of 69 cities, or 89.8%. In the abolition states, 20 out of 27, i.e., 74.1% did not believe that there was any connection between the possible threat of the death penalty and the likelihood of a criminal using a lethal weapon in encounters with the police.

Warfare in Chicago

In connection with the study just summarized another inquiry was also made aimed at ascertaining whether or not the police in abolition states tended to kill more criminals or suspects than did the police of the death penalty states. The analysis of the data so secured found no significant differences. One of the schedules returned, from the city of Chicago,³⁵ was so complete that it will be utilized, together with the equally complete schedule of police killed in that city, to show the close relation that exists between these two phenomena.

During the period 1920-1954, 168 policemen were killed by criminals or suspects using lethal weapons, i.e., firearms or knives. Records on woundings were not avail-

(35) Through the courtesy of Mr. Edward C. Erickson, Director of Records and Communications, Chicago Police Department.

able before 1923, but during 1923-1954, 243 policemen were similarly wounded, and 147 killed, while police in turn killed 927 criminals or suspects and private citizens, an additional 1066. Table 24 and Diagram VII which is based on it show the development of the situation in Chicago. The years 1924-1934 proved disastrous for police and criminals alike. The curves clearly reflect the

TABLE 24

POLICE KILLED OR WOUNDED IN CHICAGO, ILL., CRIMINALS KILLED BY POLICE OR PRIVATE CITIZENS, AND EXECUTIONS IN COOK COUNTY, 1923-1954

Year	Policemen		Total	Criminals Killed by		Number of Persons Executed Cook County
	Killed	Wounded		Police	Others	
1923	2	13	15	10	26	1
1924	10	18	28	28	35	2
1925	11	20	31	38	30	3
1926	9	14	23	37	74	8
1927	9	7	16	42	68	3
1928	13	26	39	52	55	—
1929	11	12	23	38	41	4
1930	10	14	24	48	69	6
1931	9	15	24	62	58	4
1932	8	8	16	48	56	3
1933	12	14	26	55	64	2
1934	9	13	22	43	65	7
1935	3	10	13	46	41	1
1936	2	4	6	32	37	2
1937	1	6	7	28	44	6
1938	4	6	10	28	34	2
1939	2	4	6	21	37	3
1940	—	7	7	12	37	4
1941	2	1	3	24	4	2
1942	1	5	6	22	23	3
1943	—	—	—	14	10	1
1944	2	2	4	13	12	2
1945	5	3	8	16	14	1
1946	1	2	3	16	23	—
1947	1	3	4	27	30	2 ^a
1948	—	—	—	19	15	—
1949	1	2	3	25	7	1
1950	2	—	2	15	14	3
1951	—	6	6	16	9	—
1952	1	3	4	12	11	4
1953	3	2	5	20	10	1
1954	3	3	6	20	13	—
Total ..	147	243	390	927	1066	81

^a Cook County Jail reports two executions; the U. S. Bureau of the Census reports only one for Illinois that year.

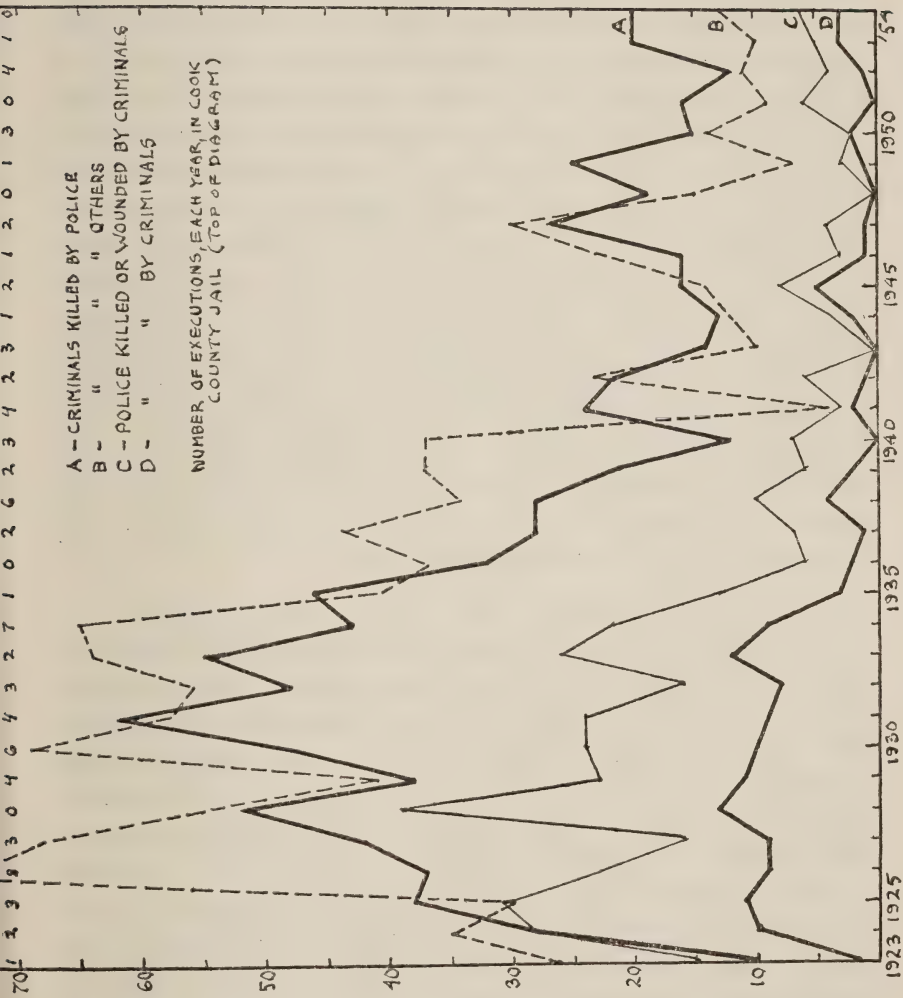


Diagram VII. Number of Police Killed or Wounded by Criminals; Criminals Killed by Police or Private Persons; and Number of Persons Executed in the Cook County Jail: Chicago, 1923-1954.

greatly disturbed conditions of the city during that period, in particular. Now Illinois has the death penalty, in fact one of its three electric chairs is in the Cook County Jail in Chicago. The executions during this period in that jail³⁶ are indicated on the diagram as well as in the table. An examination of the data suggests that it would be indiscreet for any one to claim that the death penalty in Chicago discouraged the killing of policemen in that city.

The data from Chicago are interesting in other ways. During the period 1934-1954, for instance, policemen killed 69 and private citizens 261 criminals or suspects involved in homicide, or a total of 331. During the same period, there were 45 persons executed for murder in the Cook County Jail. In other words, there were nearly 8 times as many homicidal offenders killed unofficially, so to speak, as were those electrocuted. There were 5,132 murders and non-negligent manslaughters known to the police during these years. In connection with 6.45 per cent of these homicides, a criminal or suspect met his death at the hands of police or citizens, while .88 per cent were put to death in the electric chair.

* * *

Students of the problem of homicide rarely ever discuss the death penalty. They do not think of it as a factor worth mentioning. They are usually interested in finding the relationship between homicide and social and economic conditions under which the offender lives or the personality characteristics which he possesses. Even in personality studies of murderers it is rare to find any mention of the role which the potential threat of execution is assumed to play. It is only those who are primarily concerned with the social policy of penal treatment who in considering the death penalty wonder what purpose it may serve and debate the issue of its retention or abolition.

(36) Supplied by Warden Irvin J. Blazek.

In preceding pages, one of the aspects of this issue has been considered, namely, the question of whether or not the death penalty appears to have any effect on homicide death rates. We have examined comparatively such rates in selected states that do and those that do not have the death penalty; we have compared the rates of capital crimes in specific states or countries that have experimented with abolition in order to observe the effect of the abolition or the introduction of capital punishment on such rates; we have noted the specific effect of highly publicized executions on homicides in a metropolitan city; and we have tried to learn if the claim of the police is true, when they say that their lives are safer in states that have the death penalty.

Any one who carefully examines the above data is bound to arrive at the conclusion that the death penalty, as we use it, exercises no influence on the extent or fluctuating rates of capital crimes. It has failed as a deterrent. If it has utilitarian value, it must rest in some other attribute than its power to influence the future conduct of people.

ERRORS OF JUSTICE

Human justice can never be infallible. No matter how conscientiously courts operate, there still exists a possibility that an innocent person may, due to a combination of circumstances that defeat justice, be sentenced to death and even executed. That possibility is made abundantly clear when one considers the many instances in which innocent persons have been saved from the extreme penalty either by the last minute discovery of new evidence or by a commutation followed, perhaps after many years in prison, by the discovery of the real criminal. Between the spectacular cases of the Boorn brothers in 1819 and of James Foster in 1958 there must be scores of such events in the United States.

In 1819, Stephen and Jesse Boorn [Bourne] of Manchester, Vermont, were indicted for the murder of their

brother-in-law, Russel Colvin, a man of "feeble capacity"³⁷ who had disappeared in 1812. After a strange series of testimony, both defendants confessed to the murder and Stephen Boorn even signed a confession after "persuasion and threats had been used." The brothers were convicted and sentenced to hanging. The state legislature was in session. Prevailed upon by some citizens, the legislature voted to commute Jesse's sentence but not that of Stephen. Some persons who believed that they were innocent caused an advertisement to be inserted in the *Rutland Herald*, describing the supposed victim and asking printers everywhere to give publicity to the notice. The *New York Evening Post* reprinted it with the result that Colvin was discovered alive in New Jersey.

In June 1956, Charles Drake was murdered in Jefferson, Georgia, and one James Foster was definitely identified by the murdered man's wife as the slayer. Foster was twice sentenced to death for this crime and might have been executed in July 1958 if the real murderer had not been found. He was a former Cairo, Illinois, policeman, who was at the moment serving a term for another crime in the Columbia, South Carolina, jail.

Among the American cases which Edwin M. Borchard reviews in his work, *Convicting the Innocent*, nine had hairbreadth escapes from execution for crimes they did not commit. Others have not been so fortunate. It is claimed that both Maine and Rhode Island abolished the death penalty because of the execution, in each of these states, of an innocent person.³⁸ Several cases are identified by Raymond T. Bye.³⁹

(37) Henry St. Clair, *The United States Criminal Calendar . . .* (356 pp., Boston, 1835), p. 203. The case is also related by Edwin M. Borchard, *Convicting the Innocent* (421 pp., New Haven: Yale Univ. Press, 1932).

(38) Letter from Gov. Edmund S. Muskie of Maine, March 20, 1958, to E. Goerke, Jr., Chairman, Prison Committee, Religious Society of Friends, New York City; Letter from John A. Murphy, Chief of Police, Providence, R.I., Feb. 25, 1958, to Herbert L. Cobin, President, Prisoners' Aid Society of Delaware.

(39) *Capital Punishment in the United States* (iv, 106 pp. Philadelphia: The Committee on Philanthropic Labor of the Philadelphia Yearly Meeting of Friends, 1918), pp. 80-81.

We may assume that since the number of executions has declined more and more, the opportunity for making these fatal and irrevocable errors of justice are rare. The argument has been heard that such occasional errors, while deplorable, are nevertheless excusable and are outweighed by the great service to society which the death penalty is believed to render by its deterrent power. This would seem to be the only logical defense but it has no basis in fact. Those who advocate the use of the death penalty only because they regard it as a just or well-deserved retribution for crime, or atonement for taking a human life, would probably be unwilling to defend the execution of an innocent person.

CAPITAL PUNISHMENT AS CAUSE FOR MURDER

It is a curious fact that there are cases on record that show that the desire to be executed has caused persons to commit a capital crime. Such crimes are indirect forms of suicide as a rule, the individual involved being unable to take his own life. In other instances a pathological desire to die by execution has been noted. For example, in 1820, in Dresden, Germany, a murderer was beheaded publicly. The ritual made such an impression on a weak-minded woman present that, four weeks later, she killed a girl who was visiting her. She then went to the police, who on visiting her house found the date of the execution just mentioned marked on her door. She said that this execution, as well as two others she had witnessed in 1804 and 1809, had put into her head the idea of committing a murder so that she could die in the same way.⁴⁰

Committing suicide by execution seems to have been a well-known procedure in olden days. In the *Journals of Henry Melchior Muhlenberg* (Philadelphia, 1945), a leading pastor in Philadelphia before the Revolution made the following entries in his diary:

(40) Frede, "Hinrichtung als Mordsuggestion." *Monatsschrift für Kriminalpsychologie und Strafrechtsreform*, 19:252-3, 1928.

May 23, 1765. Heard a distressing report from New York. A number of awakened members of Brother Wyegand's congregation have been holding weekly devotional hours, and one member of the said company cut the throat of his own three-months old son . . . The malefactor confessed that he had been tired of life and tormented with the notion that he should take his own life, but that he had not been able to summon up courage to kill himself, so he had hit upon this act as a way in which he might die by the process of the law. (Vol. 2, p. 235)

Sept. 1, 1765. From five to six o'clock I spent in the prison, speaking and praying with a thirty-year-old German, named Henrich Albers, born in Luneburg, Hanover. He had purposely cut the throat of a twelve-year-old German boy in order that he might lose his own life. (Ibid, p. 264)

In 1760, a lieutenant of the Provincial militia was executed in Philadelphia for the murder of one Scull. "The murderer, soured by some disgust, was weary of life. He resolved, in order to deprive himself of existence, to shoot the first person whom he might meet and surrender himself to justice. He walked out with this determination, having a fusil in his hand. Upon the commons, then abounding in game, now Penn Square, in the City of Philadelphia, he soon met Dr. Cadwalader, who accosted him unexpectedly, with a bow, saying, 'Good morning, Sir! A fine day for your sport!' Bruluman afterwards declared that though Dr. Cadwalader was an entire stranger, there was in his manner something indescribable, which made it impossible for him to kill him. But the resolution to kill a human being was unchanged, and Mr. Scull soon after became the victim." ⁴¹

(41) Henry Simpson, *The Lives of Eminent Philadelphians* . . . (993 pp. Philadelphia, 1859), p. 159.

These cases must have once been fairly frequent ⁴² because Denmark, by an ordinance of December 18, 1767, deliberately abandoned the death penalty in cases where "melancholy and other dismal persons (committed murder) for the exclusive purpose of losing their lives". A leading Danish jurist of that period explained that this limitation was introduced because of "the thinking that was then current among the unenlightened that by murdering another person and thereby being sentenced to death, one might still attain salvation whereas if one were to take one's own life, one would be plunged into eternal damnation." ⁴³

The ordinance was ineffective in one case, at least, that of Jens Nielsen, who was born in 1862 and spent a most unhappy and unfortunate childhood. In 1884 he was sentenced to 16 years of hard labor for theft and arson. The following year he tried to kill a prison guard. He was tried, sentenced to death and received a commutation to life. He was then placed in solitary confinement. A year later he tried again to kill a guard, "realizing that he could not stand solitary confinement, did not have the nerve to commit suicide and wanted to force his execution." He was again tried, sentenced to death and the sentence commuted. In 1892, having remained in solitary confinement all that time, he tried again to kill a guard. This time he got his wish, was sentenced to death and executed, November 8, 1892. ⁴⁴

It may well be that cases of this type no longer are common, but they have not disappeared completely. Less than three decades ago, one occurred in Lyons, France, de-

(42) A large number, from the middle of the 17th century to 1829, will be found in H. von Weber's "Selbstmord als Mordmotiv," *Monatsschrift f. Kriminalbiologie u. Strafrechtsreform*, 28:161-81, Apr., 1937.

(43) Quoted by Johannes Andenaes, "General prevention—illusion or reality." *Jour. of Crim. Law, Crimin., and Police Science*, 43:176-98, July-Aug., 1952.

(44) Stener Grundtvig, *Dødsdommene i Danmark 1866-1892* (Copenhagen, 1893), pp. 264-74.

scribed by Dr. Edmond Locard, chief of the police science laboratory of that city.⁴⁵

A couple attended the Celestine Theater in Lyon. When the curtain had risen, the hall being half dark, the husband saw his wife fall forward. He raised her and discovered that she had been struck in the back. The knife was in the wound. The show stopped. The wounded was removed to the foyer where she died. The killer made no resistance when he was arrested. He admitted his crime. His victim was a complete stranger to him, as was her husband. He did not know their names. He had no reason to wish them ill. Although the deed appeared that of one demented, judicial investigation was started. No reason that could explain the act was discovered. On the other hand, the criminal revealed no sign of insanity. He was an honorable worker, pious, honest, without vices; he could not be exculpated by insanity or furor, to use the terms of the law. After the sentence to death he gave the following strange explanation: "I do not want to sin. For some time I have felt temptations against purity. I fear I cannot remain chaste. I could not think of suicide, which is a sin more serious than fornication. I therefore decided to commit a capital crime, for thus I would have time to repent before my execution and would arrive immaculate in Heaven!"

Frederick Field, who in 1931 committed two murders in London, is described by Inspector Robert Fabian of Scotland Yard, as "the only man in the records of the Yard who may be said to have committed suicide by judicial hanging";⁴⁶ and Robert Irwin, who committed a triple murder in New York in 1937 was driven by a desire to commit a similarly devious suicide.⁴⁷

(45) Edmond Locard, "Le crime sans cause." *La Giustizia Penale* (Rome), Pt. I, 45:411-22, Nov., 1939.

(46) *American Weekly*, March 20, 1955.

(47) Frederic Wertham, *The Show of Violence* (279 pp. Garden City, N.Y.: Doubleday and Co., 1949), pp. 101-83.

To what extent the desire for punishment of such an extreme nature in order to fulfill an urge for self-immolation may be more subtly hidden in the motivation of murderers is a problem for psychiatrists. The cases where this motivation is brought clearly to light are no doubt rare and those involved would probably be found to be mentally deranged and placed in appropriate institutions. However, without the existence of the death penalty these rare murders might not have occurred.

A curious case in reverse, so to speak, is related by Jean Constant in a report to the Royal Commission on Capital Punishment.⁴⁸ "About 1930, a Belgian living in France murdered his mother and his mistress. Knowing that if he were tried in France he faced a grave risk of being sentenced to death and executed, he escaped the same day to Belgium. Hardly had he arrived on Belgian soil when he made enquiries as to whether he could be extradited. Being wrongly informed and thinking that an extradition order could be issued unless he had also committed a crime on Belgian soil, he went straight to one of his former teachers whom he had not seen for twenty years and shot him point blank—solely to escape in this way from French justice and thereby from the execution of the death penalty." Mr. Constant cites this case in support of a claim that the death penalty is feared and hence presumably a deterrent, even though its existence in France had not kept the person in question from committing two murders. From another point of view, one might argue that had not the death penalty existed in France, the Belgian would not have committed his third and deliberate murder. In this case the death penalty was the cause of murder done to save the murderer's life rather than to lose it.

IS IMPRISONMENT FOR LIFE AN INADEQUATE SUBSTITUTE?

Even when defenders of the death penalty concede that capital punishment does not seem to act as a specific deter-

(48) *Memoranda and Replies to a Questionnaire . . . III. Europe* (London, 1953), p. 802.

rent, they may demand that it be used in order to protect society against the convicted murderer. It is said that (1) the imprisonment of the murderer endangers both his fellow-convicts and his custodians, for if there is no threat of execution there is nothing left to bridle his homicidal impulses; (2) nor does imprisonment protect the community at large, for murderers originally sentenced for life may be pardoned or paroled and can repeat their crimes when they are thus allowed to return to the community.

Prison authorities generally find little to complain about, so far as the conduct of prisoners serving sentences for murder is concerned. In 1950, the International Penal and Penitentiary Commission made a survey^{48a} of the impact of capital punishment on correctional administration and the questionnaire which was sent to a large number of governments included a request for information indicating whether violent assaults on prison personnel or fellow prisoners, suicide or attempted suicide, escape or attempted escape, and disciplinary violations in general were more frequently committed by these prisoners than by others.

Austria, Belgium, Denmark, England and Wales, Finland, Norway, Sweden, and Switzerland replied that there were no indications that these forms of behavior occurred more frequently among those serving sentences for capital crimes than among other prisoners. Countries without the death penalty reported no more serious disciplinary problems than the countries which had retained the penalty; this is an interesting observation, for if the executions in the latter countries are presumed to have removed the most troublesome prisoners, the countries without the death penalty should have reported that they had more difficulties with their life prisoners.

Scotland, Northern Ireland, and Eire even claimed that bad conduct was less frequent among the reprieved murderers. In Scotland, the unanimous opinion of gov-

(48a) The report of the survey was never published but is in the possession of the author, who was at the time Secretary General of the Commission.

ernors and officers of long service was that these prisoners as a rule ranked with the most orderly and well-balanced prisoners and that incidents connected with them were much below the average number. Eire pointed out that these prisoners were in general amenable to prison rules, were better behaved than prisoners serving short sentences and that there was no record of violence on their part. Northern Ireland stressed that reprieved murderers were generally first offenders and must by experience be classified as well-conducted convicts. Finland noted that they were more difficult to handle in the beginning and tried to escape more often but that after some time they became more adaptable and easy to manage, because they realized that their behavior would be taken into account later when they could apply for a pardon.

The reply from Belgium was even more specific. With respect to violent assault, the rare cases since 1933 justified the statement that they were always the deeds of mentally ill or unbalanced prisoners. Those sentenced to death and given commuted life sentences—the standard practice in Belgium—distinguished themselves only by the fact that this category of prisoners contained a higher proportion of mental cases. Suicides or attempted suicide had become very rare because of special preventive measures, and escapes had not occurred because of strict supervision.

England and Wales listed 3 suicides as having occurred among 202 reprieved murderers. Denmark reported that among its 21 lifers there had been two assaults on staff members by one prisoner, one suicide and four attempted suicides (involving three prisoners), one escape (recaptured a few days later), and one attempted escape. No appreciable differences could be found between lifers and other convicts either in these respects or when considering breaches of disciplinary rules. Sweden reported that among 32 lifers studied none had been guilty of assaults or disciplinary violations, but one had committed suicide.

The same views as those just expressed by prison administrations in many European countries are held by American wardens and superintendents of correctional institutions. Lifers are generally considered to be among the best behaved prisoners. It would be unnatural were they not at times involved in disciplinary violations, and examples are known when some lifer has committed an assault in prison and even a homicide, but these appear to be very rare exceptions. Generally speaking, such murderous offenses are committed by prisoners serving sentences for other crimes than murder. What would happen if life prisoners were deprived of all hope of a future release is, of course, open to conjecture. Recent legislation in some states and proposed in others, depriving a person sentenced to life for murder of that hope, may prove to be most inadvisable.

Before we consider the conduct of those murderers who have been released on parole or granted pardons, let us look at a related problem, namely the meaning of life imprisonment in actual practice, for one of the criticisms made by those in favor of the death penalty is that life imprisonment is really non-existent. In an address before the New York Herald Tribune's Round-Table Forum, October 4, 1937, a leading federal law enforcement official stated: "We are amazed to learn that there is no such thing as a life prisoner; that the average man who receives a life sentence for murder spends only about two years behind bars, and that the average sentence served by a person convicted of murder is only sixty-one months."⁴⁹ If this were true, the public might well be alarmed, but the statistics cited are inaccurate. They are based on data pertaining to all prisoners released from sentences for all kinds of homicides, although we are here concerned only with those who were originally committed to prison on sentences for murder in the first degree, since that is the class of murder which

(49) Quoted in Alfred Harries, "How long is a life sentence for murder?" *Proceedings of . . . the American Prison Association . . . 1939*, pp. 513-24; p. 513.

alone is threatened by death, and since the sentence to imprisonment in lieu of a death penalty is either fixed by the court or, through commutation, by the pardoning authority.

The quotation mentioned above prompted the only large scale study so far made in the United States on what is meant by a life sentence for murder. With the cooperation of the Bureau of the Census, Mr. Alfred Harries examined the method of release and the length of time spent in prison previously by all persons who were released from the state prisons of eight American states having originally been committed for life for murder in the first degree or for life or a term of years for murder in the second degree, the releases having occurred during the years 1926 to 1937, inclusive. The data were available because during the period studied, the Bureau of the Census had the necessary information on the schedules supplied by the prisons for the use of the Bureau in publishing its national statistical report on prisoners in state and federal penal institutions for adults.

Table 25 shows what a life sentence meant to those released, who might have been sentenced to death originally. Two of the states, Michigan and Kansas had no death penalty during this period examined. Kansas did introduce it in 1935 but had no execution. Illinois was included in this table, but its data refer to all murders, this state having made no distinction between murders in the first and those in the second degree. The effect of this merger is evident in the table.

Since a lifer, who dies in prison has thus served his sentence in full, the table shows that of the 1473 releases, 368 were by death, 25.0 per cent. One out of four lifers served his term. Of the states studied, in Pennsylvania 42.2 per cent of its first degree lifers left the prison by death; in New Jersey only 8.9 per cent. Connecticut and Massachusetts had a mandatory death penalty during these years for murder in the first degree. Those not executed in these states had received sentences for second degree murder or commutations.

Releases by pardon or parole and those by other methods accounted for 75 per cent of the total, almost evenly divided. All of the 583 paroled or pardoned were not returned to the American community. There were 90 of them who were so released in order to permit their deportation as undesirable aliens. The average length of time served before pardon or parole varied from 15.7 years in Illinois to 9.4 in Kansas, not counting the two pardons in Massachusetts after an average term of 25.5 years. The single Connecticut case involved a parole for deportation.

TABLE 25

METHOD OF RELEASE AND TIME SERVED BY PRISONERS COMMITTED TO PRISON ON SENTENCE FOR FIRST DEGREE MURDER TO IMPRISONMENT AND RELEASED FROM SUCH PRISONS DURING 1926-1937, IN SOME STATES

State	Total No.	Released by							
		Death			Parole or Pardon			Other methods	
		No.	Per cent of total	Aver. time served in years	No.	%	Aver. time served	No.	Aver. time served
Conn.	1	—	—	—	1	—	25.0	—	—
Mass.	3	—	—	—	2	66.6	25.5	1	?
Penn.	97	41	42.2	5.2	48	49.5	12.8	8	2.8
N.J.	79	7	8.9	8.3	56	70.4	12.1	16	3.9
Calif.	270	89	33.0	8.1	181	67.0	12.8	—	—
Kansas ...	98	22	22.4	10.4	42	42.9	9.4	34	11.1
Mich.	193	52	27.0	8.2	92	47.7	13.8	49	3.3
Ill.*	732	157	21.4	7.8	161	22.0	15.7	414	8.6

* Illinois has no degrees of murder. All commitments for murder are included here.

TABLE 26

METHOD OF RELEASE AND TIME SERVED BY PRISONERS COMMITTED TO SERVE SENTENCES FOR SECOND DEGREE MURDER AND RELEASED FROM SUCH PRISON DURING 1926-1937, IN SOME STATES

State	Total No.	Released by							
		Death			Parole or Pardon			Other methods	
		No.	Per cent of total	Aver. time served in years	No.	%	Aver. time served	No.	Aver. time served
Conn.	49	13	26.5	16.9	36	73.5	18.0	—	—
Mass.	115	15	13.0	12.3	80	69.6	15.8	20	4.5
Penn.	950	63	6.6	4.4	827	87.1	8.2	60	6.9
N.J.	248	20	8.1	6.5	188	75.8	7.9	40	5.3
Calif.	177	28	15.8	7.6	132	74.6	10.4	17	11.8
Kansas ...	119	8	6.7	7.0	45	37.8	6.7	66	8.3
Mich.	214	19	8.9	4.1	180	84.1	7.3	15	3.3

Pardons were relatively rare, as a matter of fact. Only 36 were issued and of these California and Pennsylvania accounted for 15 each.

The "other methods" include release by court order, usually due to the granting of a new trial; transfers, usually to a mental hospital; expiration, an original life term having at sometime or other been reduced to a term of years by the pardon authorities; or escapes. The large number of Illinois releases in the "other methods" category in the table is due to expirations of sentences—337 out of 414. There was one escape in New Jersey, one in Pennsylvania, 11 in Kansas and 11 in Michigan. The data available to Mr. Harries did not allow him to determine if any of these escapes were successful, nor could he determine how many of the 32 escapes from Illinois prisons involved first degree murderers.

Table 26 indicates that those who had been given sentences for murder in the second degree, an offense not punishable by death, fared quite differently. Of the 1872 prisoners released from such sentences in seven states, excluding Illinois, 8.9 per cent had died and 79.5 per cent were paroled or pardoned. The effect of the mandatory death sentence on second degree murder releases from Connecticut and Massachusetts is obvious. In these two states, second degree life sentences were in fact analogous to the alternative life sentences possible in the rest of the states for first degree murder.

Official statistical reports from the various states rarely make possible the separation of first from second degree murder cases in data showing the time served before release. California is an exception. The annual report on *California Prisoners*, published by the Bureau of Criminal Statistics of the Department of Justice of California, gives information on first degree murder prisoners, who are paroled for the first time. In 1957, 26 such prisoners were paroled. Eight out of ten of them had spent anywhere from 96 to 222 months in prison, and one less and one more

than that range. The median time served had been 10 years. This represents a rather steady decline since the 1945-49 period when the corresponding median was 14 years and 1952-53, when it was 12 years.

It is generally agreed that those who are allowed to return to the community after serving a term of years for a capital crime, behave themselves better than do other criminals similarly released. Ample data to support this statement are found in the *Report of the Royal Commission on Capital Punishment*, Appendix 15, so far as foreign nations are concerned. American data confirm it also. A few years ago the director of parole of the State Board of Parole of Pennsylvania published the results of a nationwide inquiry concerning capital offenders released on parole.⁵⁰ Data were secured from twenty states for periods varying in length from 10 to 38 years. The total of 195 prisoners reported did not include those pardoned or who had left the institutions of these states alive but by other forms of release than parole. The authors found that 11 of the prisoners had been returned to prison for new offenses and seven for parole violations of other kinds; 5 had disappeared, 11 had died, 34 had successfully completed parole, and 127 were still on parole. Taking Pennsylvania data, the accuracy of which the authors believed to be reliable, 36 paroles in capital cases had been issued between 1914 and 1952. Of these three persons involved had been returned with sentences for new crimes, none of them a homicide, and one for another violation of parole; 1 had absconded, 7 had died, 7 had completed parole satisfactorily, and 17 were still on parole at the end of March, 1952. There is no reason for assuming that the post-release careers of those who were pardoned, released by court order, or by the expiration of commuted sentences had a more unfavorable record during this period.

(50) G. I. Giardini and R. G. Farrow, "The Paroling of Capital Offenders." *The Annals of the American Academy of Political and Social Science*, 284:85-294, Nov., 1952.

During 1945-1954 a total of 342 California male prisoners were paroled from first degree murder commitments. By the end of June, 1956, thirty-seven of them had been declared parole violators or 10.8 per cent; 6 of them had absconded, 11 had been returned to prison for technical violations, 11 had been returned after having been convicted of a misdemeanor, and 9 had been returned on new sentences for a felony (2 for robbery, 2 for lewd acts with children; 1 for a narcotics offense; 1 for abortion; 1 for sex perversion; 1 for assault to murder; and one for second degree murder).⁵¹

The relatively low rate of recidivism among parolees from first degree murder commitments may be seen by comparing that rate with the corresponding rates for California parolees who had been serving sentences for other crimes. During 1946-1949, there were 5670 men released on parole from the prisons. Of 100 who had been paroled from first degree murder commitments, 2 were later convicted of a felony. The corresponding percentage for parolees in other offense categories were: robbery, 20.8 per cent, burglary, 25.6 per cent, forgery, 30.2 per cent, and automobile theft, 31.1 per cent.⁵² These comparative figures appear to be quite representative of the situation in other states.

An author writing in 1952,⁵³ referring to Michigan, stated that "since 1937 when the present Michigan parole board was organized, 68 first degree murder cases have been paroled after serving an average term of 22.5 years. Of these only 2 became parole violators, by receiving sentences for burglary and indecent liberties."

The conclusion seems inescapable that the murderer who is not executed but instead sentenced to life imprison-

(51) *Report of the Subcommittee of the Judiciary Committee on Capital Punishment pertaining to the Problems of the Death Penalty and its Administration in California* (Assembly Interim Committee Reports 1955-57, vol. 20, No. 3), 55 pp. Sacramento, 1957; p. 12.

(52) *Ibid.*, p. 13.

(53) Arthur Lewis Wood, "The Alternative to the Death Penalty." *The Annals*, 284:63-72, Nov., 1952; p. 71.

ment is not nearly so great a danger to the prison community, nor to the outside world when he is paroled or pardoned, as are many other classes of prisoners, who are regularly released after serving much shorter periods of imprisonment.

But, some one might say, is not the good showing of the life termers due to the fact that the most dangerous murderers have been executed? There is no evidence to show that, in choosing between death and a life sentence, juries select for the former penalty murderers who present a greater future threat of the kinds we have discussed. There is no scientific evidence to show that those executed and those spared differ from one another in this or any other respect. In any case, the administration of criminal justice in capital cases is too dependent on fortuitous circumstances, such as the skill of prosecutor and defense counsel, the composition of juries, the temper of the court, and the emotional climate of the community to permit the assumption that any rational selection could occur in the courtroom.

If the death penalty is the only adequate safeguard against future homicidal crimes by the murderer, it is evident that juries do not share this belief. In the states that still have this penalty, the alternative life sentence is usually imposed. In New York, during 1910-1926, there were 334 convictions of murder in the first degree, 210 executions, and 567 convictions of second degree murder. In Massachusetts, during 1921-54, there were 45 criminals executed and 257 given life sentences and committed. In other words, 77 per cent of the New York murderers and 85 per cent of the Massachusetts ones were put in prison. And in California, during 1945-1954, the percentage of *first* degree murderers so sentenced was 75.5.

In the last analysis, the argument that the life sentence does not offer an adequate safeguard against further homicidal criminality by a murderer who is not executed appears

untenable. Basically, those who advance it probably feel that the life sentence, in practice, is not an adequate *punishment* for murder.

LYNCHINGS

It is often claimed that the death penalty is necessary in order to prevent an outraged community from taking the law into its own hands. Experience in the United States furnishes no good basis for that claim. First of all, lynchings have almost disappeared. The average annual number of such offenses has steadily dropped from 107.4 in 1900-1904 to 2.6 in 1945-1949. In recent years they have grown even rarer. Second, lynchings have usually occurred in the South, where all the states have the death penalty. From 1882 through 1951, for instance, the states leading in the total number of persons lynched also were among the leaders in the use of capital executions, as can be seen from the following comparisons:

	<i>Number of persons lynched 1882-1951</i>	<i>Number of executions 1930-1957</i>
Mississippi	574	141
Georgia	530	342
Texas	493	259
Louisiana	391	129
Alabama	347	127

If we examine the experience of the states which have experimented with the abolition of the death penalty we find nothing to associate lynchings with that policy. Arizona had no death penalty during 1917 and 1918, but there were 7 lynchings during the previous two years, 7 during the abolition years, and 13 in 1919 and 1920. Colorado saw 3 lynchings during the years when that state had no death penalty, 14 during the same number of years prior to abolition, and 2 during the corresponding number of years

afterwards. Using the same manner of comparing three periods of equal length, before, during and after the abolition of the death penalty, the lynchings in Missouri numbered 4, 2, and 2; in Tennessee, 13, 13, and 4; in Oregon 3, 0, and 0, and in Washington 0, 1, and 0.

The Administration of Justice in Capital Cases

The effect of the death penalty, as a possible punishment following conviction of a capital crime, on the whole process of administering justice is a problem which the author of this report has had little opportunity to study, but which is undoubtedly recognized and understood both by judges and attorneys. It is claimed that when the life of a defendant is at stake, it is more difficult and it takes longer to empanel juries, because prospective jurors dislike such cases, are disqualified because they do not believe in the death penalty, or claim that they would not convict on circumstantial evidence; trials become longer and more expensive; emotions are especially likely to becloud issues; the guilty is more likely to escape punishment; appeals are more likely to result in reversals, new and equally expensive trials, or to postpone for long periods the decision until the connection between the crime and its punishment seems remote. None of these claims, nor others brought up in this connection will be examined in this report.

CONCLUSION

Certain data have been presented in preceding pages in the hope that they may be of assistance to the legislator who is faced with the issue of whether or not the death penalty should be prescribed by law for the crime of murder. While some of the data are based on events of the last few decades, in particular, neither their nature nor the inferences drawn from their analysis are new. Similar data have given rise to the same inferences ever since the problem of the death penalty has been subjected to study. The

works of Mittermaier, Hetzel, and Olivecrona of nearly a century ago and the much earlier work of Lucas are excellent examples, in spite of which the debate has continued to rage, using the same threadbare, dogmatic arguments and ignoring all empirical evidence except what seemed to give support to the debater's view.

It is obvious that the difficulty lies in the fact that the issue is beclouded by emotions and sentiments that beset proponent and opponent alike. All legislative debates of the issue and public discussion in general give evidence of it. These sentiments and emotions and the beliefs they engender are deeply rooted in a people's culture. They are conditioned by a multitude of factors, such as the character of social institutions, political and economic creeds, the class and caste structure, etc. If at a given time these beliefs become so oriented that they favor the abolition of the death penalty, data of the kind presented in this report will be acceptable as evidence but if there is a resurgence of the old ideas they are just as likely then to be ignored. When a people no longer tolerate the idea of putting a person to death for a crime, the death penalty will disappear no matter what may happen to murder rates, for this is what has happened in the past in connection with property crimes.

It is a curious fact that in the debate about the death penalty, its supporters have relied mostly on tradition and what we have earlier called dogmas, appealing to the feelings of people. The abolitionists have not neglected such appeals, but they have also had recourse to empirical evidence. All the best works on the subject have undoubtedly been written by abolitionists, who have accepted the burden of proof which should lie with at least equal weight on their opponents. When Sir Ernest Gowers had completed his work as chairman of the recent Royal Commission on Capital Punishment and was free to express an opinion, which could not be placed in the report of the Commission

because of the restricted mandate under which it operated, he wrote: "Before serving on the Royal Commission I, like most other people, had given no great thought to this problem. If I had been asked for my opinion, I should probably have said that I was in favor of the death penalty and disposed to regard abolitionists as people whose hearts were bigger than their heads. Four years of close study of the subject gradually dispelled that feeling. In the end I became convinced that the abolitionists were right in their conclusions—though I could not agree with all their arguments—and that so far from the sentimental approach leading into their camp and the rational one into that of the supporters, it was the other way about."⁵⁴

APPENDIX

Executions in 1958

Since the first printing of this report, more recent data on executions have been issued by the Federal Bureau of Prisons (*National Prisoner Statistics*, no. 20, Feb., 1959). They indicate that in 1958 the number of executions in the United States dipped to a record low of 48, of which 40 were for murder, 7 for rape, and 1 for armed robbery. Nineteen of those executed for murder and all those executed for other crimes were Negroes. Half of the executions took place in four states, which accounted for 6 each: California, Georgia, Ohio, and Texas. There were four executions in New York, 3 each in Florida, Mississippi, and Virginia; 2 each in Arizona, Louisiana, North Carolina, and West Virginia, and 1 each in Alabama, Illinois, and Utah. All executed were males. One execution by the Army, for murder, has not been included in the figures above.

(54) *A Life for a Life* (144 pp. London: Chatto and Windus, 1956), p. 8.

A BIBLIOGRAPHICAL NOTE

The richest source of information, factual as well as impressionistic, about the death penalty today throughout the world is the *Report of the Royal Commission on Capital Punishment, 1949-1953* (506 pp. London: Her Majesty's Stationery Office, 1953) together with the separately published *Minutes of Evidence* and *Memoranda* that furnished the data for the *Report*. Another source, also useful, is the *Final Report on Capital Punishment* (No. 115, *Votes and Proceedings of the House of Commons of Canada*, June 27, 1956) of the Joint Committee of the Senate and the House of Commons on Capital and Corporal Punishment and Lotteries, and especially the *Minutes of Proceedings and Evidence* of the Committee, covering its sessions from 1953 to 1955 and published by the Queens' Printer, Ottawa. Numerous and ample statements for or against the death penalty are scattered throughout the minutes of these two bodies. A convenient symposium on "Murder and the Penalty of Death" is contained in vol. 284 of *The Annals of the American Academy of Political and Social Science*, issued in 1952. Older surveys of the problem are found in E. Roy Calvert's *Capital Punishment in the Twentieth Century* (London and New York, 1927) and Raymond T. Bye's *Capital Punishment in the United States* (Philadelphia, 1918). George Ryley Scott's *The History of Capital Punishment* (London, 1950) and Justin Atholl's *Shadow of the Gallows* (London, 1954) are popular histories of the death penalty; the latter is restricted to hanging.

Recent works in the English language defending the death penalty are almost non-existent. An exception is Bernard O'Donnell's *Should Women Hang?* (London, 1956). A neutral view is adopted by E. J. Younger in an article on "Capital Punishment: A Sharp Medicine Reconsidered," in the *American Bar Association Journal*, vol.42, pp.113-196-9, February, 1956. On the other hand, a number of recent works have been written by abolition-

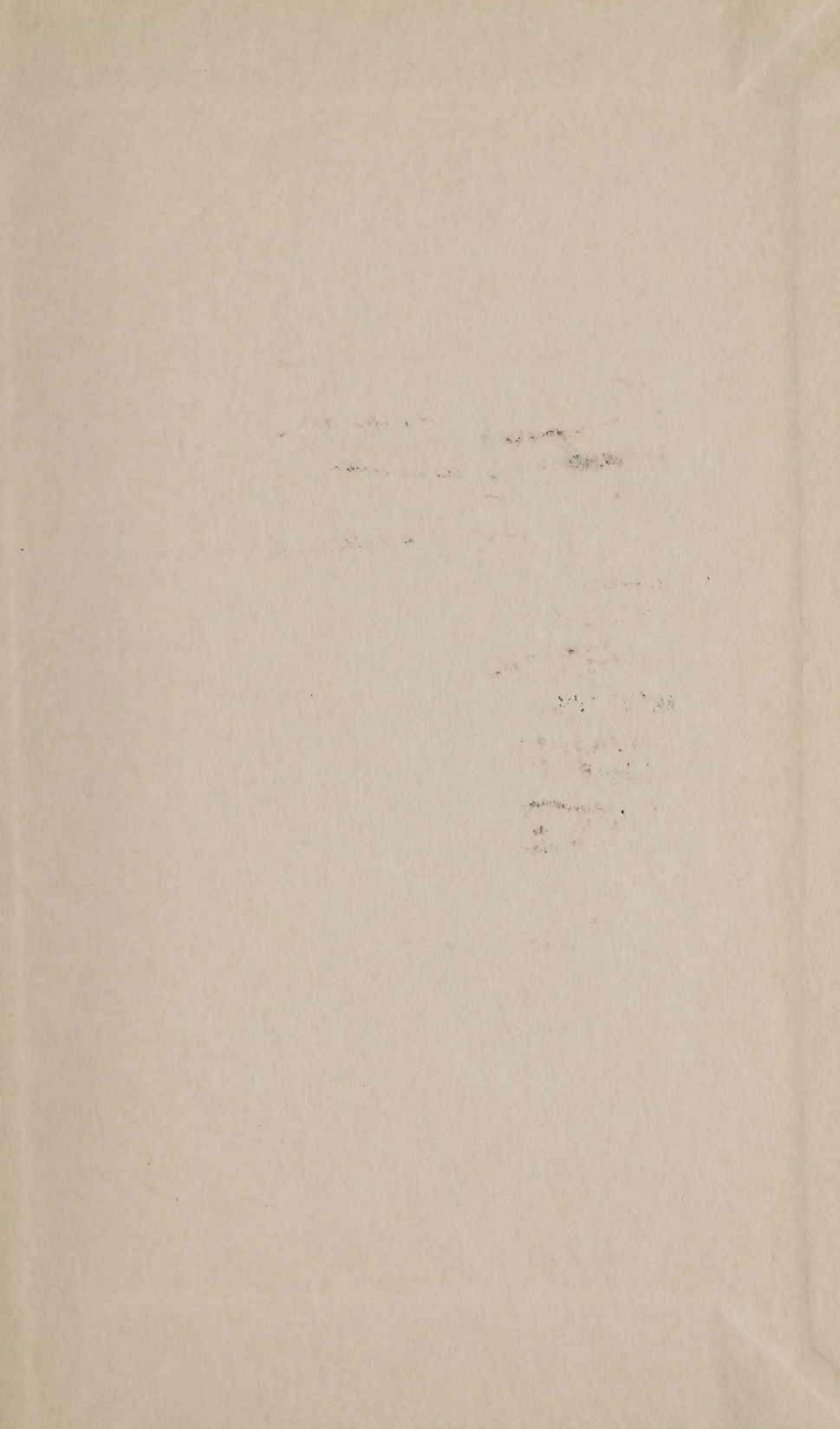
ists, such as Sir Ernest Gowers (*A Life for a Life?*, London, 1956), Gerald Gardiner (*Capital Punishment as a Deterrent, and the Alternative*, London, 1956), Arthur Koestler (*Reflections on Hanging*, London and New York, 1957), and Giles Playfair and Derrick Singleton (*The Offenders: The Case Against Legal Vengeance*, London, 1957), to mention but a few of the most recent ones.

A bibliography on capital punishment and related topics, compiled by Hugo Adam Bedau and covering writings in the English language during the last ten years, 1948-1958, is found in the *Prison Journal*, vol. 38, pp. 41-45, October, 1958, published by the Pennsylvania Prison Society, 311 S. Juniper St., Philadelphia 7, Pa.

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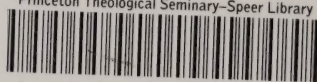
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